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Vol. II

795431
Sup. Ct.
TRANSCRIPT OF RECORD

(Pages 594 to 1050)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 79

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION; LOEW'S INCORPORATED, ET AL.

No. 80

LOEW'S, INCORPORATED, RADIO-KEITH-ORPHEUM CORPORATION, RKO RADIO-PICTURES, INC., ET AL, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 81

PARAMOUNT PICTURES, INC., AND PARAMOUNT FILM DISTRIBUTING CORPORATION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 82

COLUMBIA PICTURES CORPORATION AND COLUMBIA PICTURES OF LOUISIANA, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 83

UNITED ARTISTS CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

[CONTINUED ON SECOND PAGE OF COVER]

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED MAY 3, 1947.

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vs.

THE UNITED STATES OF AMERICA

No. 84

UNIVERSAL PICTURES COMPANY, INC. (SUED HEREIN AS UNIVERSAL CORPORATION AND UNIVERSAL PICTURES COMPANY, INC.), UNIVERSAL FILM EXCHANGES, INC., AND BIG U. FILM EXCHANGE, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

[CONTINUED ON SECOND PAGE OF COVER]

[CONTINUED FROM FIRST PAGE OF COVER]

No. 85

AMERICAN THEATRES ASSOCIATION, INC., SOUTHERN CALIFORNIA THEATRE OWNERS ASSOCIATION, JOSEPH MORITZ, ET AL, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, ET AL.

No. 86

W. C. ALLRED, CHARLES E. BEACH AND ELIZABETH L. BEACH, PARTNERS TRADING AS BEACH AND BEACH, ET AL, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

VOLUME II

(Pages 594-1050)

Record from D. C. U. S., Southern District of New York—
Continued

Print

Defendants' Cases—Continued

Print

Witnesses called by Paramount—

Adolph Zukor

Direct by Mr. Seymour

594-617

Cross by Mr. Wright

617-619

Redirect by Mr. Seymour

619

Y. Frank Freeman

Direct by Mr. Seymour

619-650

Cross by Mr. Wright

650-659

Redirect

659-664

Recross by Mr. Caskey

664

Charles M. Reagan

Direct by Mr. Seymour

665-767

Cross by Mr. Caskey

768-771

Mr. Wright

771-805

Redirect by Mr. Seymour

805-821

Recross by Mr. Wright

821-822

Mr. Leisure

823

Record from D. C. U. S., Southern District of New York—
Continued

Defendants' Cases—Continued

Witnesses called by Paramount—Continued

Print

Leonard H. Goldenston

| | |
|-------------------------|---------|
| Direct by Mr. Seymour | 823-871 |
| Cross by Mr. Frohlich | 871-873 |
| Mr. Wright | 873-886 |
| Redirect by Mr. Seymour | 886-887 |

Austin C. Keough:

| | |
|-------------------------|---------------|
| Direct by Mr. Seymour | 888-939 |
| Cross by Mr. Wright | 939-947 |
| Redirect by Mr. Seymour | 947-953 |
| Recross by Mr. Caskey | 953, 969-1 |
| Mr. Proskauer | 953-955 |
| Mr. Wright | 955-960 |
| Mr. Davis | 961 |
| Testimony stipulated | 2486-2489 (V) |

Martin J. Mullin

| | |
|-------------------------|---------|
| Direct by Mr. Seymour | 961-980 |
| Cross by Mr. Proskauer | 980-981 |
| Mr. Caskey | 981 |
| Mr. Wright | 982-984 |
| Redirect by Mr. Seymour | 984-985 |

John J. Friedl

| | |
|-------------------------|-----------------|
| Direct by Mr. Seymour | 958-1008 |
| Cross by Mr. Caskey | 1008-1010, 1028 |
| Mr. Wright | 1010-1022 |
| Redirect by Mr. Seymour | 1022-1028 |
| Recross by Mr. Wright | 1028-1029 |

Edward C. Beatty

| | |
|-----------------------|---------------|
| Direct by Mr. Seymour | 1030-1040 |
| Cross by Mr. Caskey | 1040-1042 |
| Mr. Wright | 1042-1043 |
| Testimony stipulated | 2489-2492 (V) |

Barney Balaban

| | |
|----------------------|-----------------|
| Testimony stipulated | 1565-1566 (III) |
|----------------------|-----------------|

George A. Smith

| | |
|----------------------|----------------|
| Testimony stipulated | 1873-1878 (IV) |
|----------------------|----------------|

William H. Erbb

| | |
|----------------------|----------------|
| Testimony stipulated | 1878-1882 (IV) |
|----------------------|----------------|

James J. Donohue

| | |
|----------------------|---------------------------|
| Testimony stipulated | 1882-1885, 1892-1923 (IV) |
|----------------------|---------------------------|

Hugh Owen

| | |
|----------------------|----------------|
| Testimony stipulated | 1886-1890 (IV) |
|----------------------|----------------|

Adolph Zukor—By Defendant—Direct

(839)

AFTERNOON SESSION.

Mr. Davis: I understand, if the Court please, it is suggested that we change our system of numbering the defendants' exhibits, which I think is a very happy suggestion. Our exhibits so far have been numbered Loew's alphabetically A, B, C; and I will ask the clerk and the reporter to begin those again with L-1, L-2, and so on.

Judge Hand: I think that is better.

Mr. Davis: Otherwise we are going to run clear out of the alphabet several times over, I think.

Yesterday in examining Mr. Rodgers I used a list of first-run theatres in 92 cities in the United States, having a population of 100,000 and over. I have not yet introduced that list in evidence. I shall do so later. We are checking it, and I presume Mr. Wright will want to check it before it is introduced.

That is all for the present witness, Mr. Wright.

ADOLPH ZUKOR, called as a witness on behalf of the defendant Paramount, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Zukor, are you Chairman of the Board of the defendant Paramount Pictures, Inc.? A. Yes.

Q. And how long have you been chairman of the board?
(840)

A. About ten years.

Q. And during that period what have your duties been?

A. I have been out in California for about—up to the end of 1938. After I returned from California I took a trip and

Adolph Zukor—By Defendant—Direct

visited the various branches of our organization throughout Europe and Australia and South America.

Q. And more recently have you been— A. More recently I have been in the home office and have acted more in an advisory capacity.

Q. Now, prior to 1935 when you became chairman of the board, were you president of Paramount? A. I was president of Paramount.

Q. And had you been president of Paramount and its predecessors back to 1912? A. From 1912 to 1935 I was president of the company under different names.

Q. And what were your duties as president? A. I was the chief executive of the organization.

Q. Now, when did you first have any connection with the motion picture business? A. As a producer in 1912.

Q. Prior to that time had you had some other connection? A. Prior to that time I was interested in motion picture theatres and vaudeville theatres.

Q. Now, wasn't your first connection with the motion picture business, as such, 1906? A. As an exhibitor, yes, sir. (841)

Q. Now can you tell us briefly what sort of pictures were exhibited at that time? A. At that time we had exhibited mostly single-reel pictures produced by different organizations, maybe ten or twelve individual organizations. Shortly thereafter there was organized what they called the Patents Company, which I think embraced about ten individual producers who released their product under the General Film Company.

Q. Well, dealing with the period before that, what was the general type of these one-reel pictures? A. Well, they were mostly comedies, very few that had a story to tell, because most of the pictures would not run over fifteen minutes.

Adolph Zukor—By Defendant—Direct

Q. And were there some so-called "Chase" pictures among them? A. Well, they were mainly comedy pictures, and we also used "Chase" pictures. As a matter of fact the pictures were then used at the closing of a vaudeville show. At the end of a vaudeville show they put on a picture, and the audience knew the show was over and they moved out.

Q. Now, dealing with the places where pictures were shown, were many of those so-called nickelodeons? A. Yes, they were called nickelodeons, store shows.

Q. And the average place where the pictures were shown was in a store, a remodeled store? A. Yes, mostly in a remodeled store, anywhere from 150 to 300, 350 seats.

(842)

Q. Now, you had some interest in such a remodeled store in 14th Street, did you? A. Yes, I did.

Q. What was the nature of that exhibition place? A. Well, in that place we showed pictures and vaudeville. We had four acts of vaudeville and one or two reels of pictures that constituted the show.

Q. Was that the place where you had the theatre set up like an observation car? A. No. The observation car preceded this arrangement.

Q. Tell us about that. A. When I first started in pictures, showing pictures, which was in 1906, we had obtained the rights to the Hale storing car, which was a car very much like an observation car today on a train, and it was equipped with all of the rocking, and the bell, and everything that looked like or created an illusion that you were traveling through the country; and on the farther end of the car where there was a screen, we showed travelogues, and it created an illusion that you were traveling and observing the scenic beauties of the various countries that we were able to obtain pictures of to show.

Q. Now, shortly after 1906 did you become associated with Marcus Loew in connection with some theatres? A. I

Adolph Zukor—By Defendant—Direct

became associated with Mr. Loew. I leased a theatre, the Bedford, in Brooklyn, in association with William A. Brady, (843).

who was also a legitimate producer of drama. He was associated with me in the Hale enterprise, and in association with Mr. Brady we took a lease on the Bedford Theatre. Subsequently Mr. Loew took over Mr. Brady's part of the Bedford; and so we became associated in the Bedford Theatre. That was our first joint venture in operating theatres generally.

Q. And then you continued for a relatively short time, interested with Mr. Loew, and subsequently in the Loew enterprises, and that terminated sometime around 1912 or 1913, is that right? A. I had been associated with Mr. Loew up to about 1911 as an officer.

Q. But after that you had no further association with Mr. Loew? A. I had no association except that I had stockholdings in the company which I disposed of a short while after.

Q. So that at or about that time you ceased any relationship to Loew or Loew enterprises? A. Yes.

Q. Now, when did you first begin to produce pictures? A. In 1912.

Q. How did you happen to get into that business? A. Well, I had watched the audience reaction to pictures, and I found that whenever there was a picture shown of two reels or more that had a story to tell, that the audience was very much fascinated and very much interested; and I had an idea (844)

that if we were able to obtain pictures with a story and with a good cast, that the audience would prefer a good motion picture to the ones that were then in existence.

Q. Now, had there been several longer foreign films imported into the United States? A. Yes. One in particular that comes to my mind was the Passion Play that was produced in France by Pathe that I—and of course we bought

Adolph Zukor—By Defendant—Direct

the pictures outright at that time—and I had shown the *Passion Play* for the first time in a store show in Newark; and the response from the audience was so good and so great, that I then and there made up my mind that there is definitely room for better pictures, feature length pictures in the motion picture theatre.

Q. Now had you arranged to produce abroad a picture called *Queen Elizabeth*, with Sarah Bernhardt? A. That came at the end of 1911 when they were making or planning to make this picture in France; and I financed the picture, or a good part of the picture for the American rights to *Queen Elizabeth*, which was enacted by Sarah Bernhardt.

Q. Now in 1912 you formed Famous Players? A. In 1912 I formed Famous Players.

Q. And you became president? A. Yes, sir.

Q. And what sort of pictures did Famous Players produce? A. Famous Players produced their feature pictures, (845)

and our first picture was the *Prisoner of Zenda*, in which we starred James K. Hackett.

Q. Was Famous Players the first company in the United States to produce feature pictures? A. To my knowledge, yes, sir.

Q. And you continued as president of Famous Players and its successors right down to 1935, when you surrendered the presidency of Paramount? A. I did.

Q. Now shortly after Famous Players began to produce feature pictures, did other companies come into the field and begin to produce feature pictures? A. Oh, quite a few.

Q. And were there a number of other companies producing feature pictures between 1912 and say 1917 or 1918? A. A great number.

Q. Now, what was the general source of material for pictures, for feature pictures at that time? A. Well, Famous Players concentrated on famous players and famous

Adolph Zukor—By Defendant—Direct.

plays. We had endeavored to obtain the rights to make into picture shows or plays that had been presented on the stage, and we obtained in many cases the stars who had made the play famous.

Q. So that in general you were producing pictures made from stage plays with the stars who had made the plays famous? A. Yes.

(846)

Q. Were you also developing some stories of your own?

A. We had developed stories and also stars of our own.

Q. Now, was Mary Pickford one of the stars that you developed? A. No. Mary Pickford was on the stage in a play called *The Good Little Devil*, if I am not mistaken, and that was produced by David Belasco. We had obtained the rights to that play and also the services of Mary Pickford to enact the leading role in that play.

Q. Now after that did Mary Pickford continue to play in pictures for Famous Players? A. After that Mary Pickford continued and remained with Famous Players for a number of years.

Q. Was Mary Pickford perhaps your most famous star?

A. She was the most famous star in the business.

Q. Did Famous Players have other stars by 1918 or 1919?

A. Yes; we had developed many other stars during that same period.

Q. Now, at that time, that is, in the period between 1912 and shortly thereafter, how were pictures that you produced distributed? A. The first year we were in business—I think in 1913 we made thirty pictures; and these thirty pictures we sold to State-right buyers throughout the country.

Q. Did those State-right buyers eventually form Paramount Pictures Corporation? A. They did.

(847)

Q. That is a different company from the present Paramount Company, isn't it? A. Yes.

Adolph Zukor—By Defendant—Direct

Q. And some time after the formation of that company did Famous Players acquire some interest in it? A. After they were formed we acquired an interest in it.

Q. And Paramount Pictures Corporation distributed the pictures produced by Famous Players? A. Yes.

Q. And also certain other producers? A. Other producers.

Q. Now, shortly after Famous Players was organized, did that company merge with the Jesse L. Lasky Company? A. Yes.

Q. Was that also a producer? A. A producer of pictures. Their pictures also went to the Paramount Pictures Corporation which was the distributing company.

Q. And the result of that merger was the formation of the Famous Players-Lasky Company? A. Yes, sir.

Q. Now after 1912, and dealing with the period down to 1918 or 1919, had the number of exhibitors increased? A. Very materially.

Q. And had there been fine theatres prepared primarily for the exhibition of motion pictures? A. Yes. After we began to make feature pictures there were quite a number of theatres built throughout the country exclusively for pictures.

(848)

Q. And were there some very large theatres in the principal cities of the United States? A. Well, theatres seating a thousand and over, was considered at that time a very, very big theatre.

Q. Was there also a development of exhibition in smaller cities in the country? That is, were new exhibitors coming into the field? A. All through the country, yes.

Q. Now dealing with that same period, that is, 1912 to 1918 or 1919, was there a constant increase in the cost of making pictures? A. Constantly increased cost. From the technical point, we had to improve our quality, as well as the additional cost of stars and director, and so forth.

Adolph Zukor—By Defendant—Direct

Q. Were stars' salaries going up during that period? A. Yes.

Q. And had circuits of theatres, circuits of motion picture theatres developed during that period? A. Well, circuits developed right through the time when there were more than one or two or three theatres in a particular locality or in a section, that were owned or controlled by the same people.

Q. And there were circuits of theatres from the very beginning of your interest in production, were there? A. There were circuits of theatres that were devoting their playing time to vaudeville and gradually turned to pictures; so the very same circuits that had played vaudeville and pictures, (849) eventually played pictures only.

Q. Now, dealing with the period 1917-1918, at that time did Famous Players-Lasky, Paramount producer, have any interest in theatres? A. Prior to 1917, no.

Q. Now when was Associated First National formed? A. Either in 1916 or 1917, as best as I can recall.

Q. Was that an organization of exhibitors originally? A. That was an organization of exhibitors.

Q. Can you tell us something about the importance of the original exhibitor organizers of First National? A. Well, they had controlled at that time the best theatres throughout the country, and they joined hands and organized the First National. First they organized to buy pictures and gradually developed into financing and producing pictures on their own.

Q. That is, one of the purposes of this First National organization was to acquire pictures for its members, first by financing others and later by producing its own? A. That is right.

Q. Now, did that organization make any attempt to take stories away from Famous Players-Lasky? A. Yes, sir. Made

Adolph Zukor—By Defendant—Direct

an attempt and succeeded, like in the case of Mary Pickford, where they had offered her so much more money than we had paid her at the time that we lost her services.

Q. Did they succeed in taking away any other stars? (850)

A. They had taken quite a number of stars. I don't remember. They took Norma Talmadge, I recall, and Milton Sills, and many others; some from us and some from other companies.

Q. Were they negotiating with other stars? A. Yes, as far as I know they had been negotiating with all of the other stars.

Q. Now at that time I think you said that Mary Pickford was the outstanding star in the motion picture industry? A. In the industry, yes.

Q. Did the taking away of such stars as Mary Pickford and others present any particular problem to Famous Players in connection with the marketing of its pictures? A. Well, it did create a situation whereby the publicity and the propaganda that was handed out, that eventually Famous Players would be losing all of their principal stars and they would be practically out of business.

Q. Was there any situation created in New York for Famous Players at about that time? A. Yes, there was a situation created here in the Strand Theatre in New York, which was built—which to my recollection was the first theatre devoted entirely to pictures, and it was largely due to the fact that I had prevailed on Mr. Mark, who built the theatre, that we are making the type of pictures that could stand by itself without any additional attraction, if he devoted the (851)

Strand Theatre to a picture policy, that we would supply the pictures, and told him what we had in mind and what we were doing then; and they decided to devote the policy of that theatre to pictures. And about—I think it was in

Adolph Zukor—By Defendant—Direct

1917, in the fall of the year—Mr. Mark notified me that he was not going to play any more of the Paramount pictures—or, rather, the Famous Players at that time—because he had joined the First National and would play their pictures.

Q. What did you do about that? A. Well, we had no other choice; but we looked around and we finally acquired an interest in the Rivoli and Rialto, so we could retain a show window on Broadway for our product.

Q. Now, were there meetings of exhibitors that you heard about, First National exhibitors, held all over the country?

A. Well, one time I recall that the First National happened to have a meeting in Los Angeles, and I was there at the same time, and I told them that I did not think that it was a good plan that they are following by trying to take away stars from producers and making big offers and going to the producing end of the business, because it would eventually bring about a situation where the producers, in order to protect their own business, they would have to go and get the-
atres so as to create a permanent outlet for their product.

(852)

Q. Did the First National pay any attention to your arguments? A. None at all. None whatever.

Q. I was thinking, were there meetings of exhibitors elsewhere in the country, which you heard about, where attacks were made upon Famous Players-Lasky? A. There was education, not all through the country, I don't necessarily say by First National or their group, but up to the time that the First National decided to sub-franchise smaller exhibitors throughout the country, in smaller communities, up to that time we felt that we would be able to cope with the situation, but when they began to sell sub-franchises throughout the United States, and within a short period they boasted that they had 3,500 additional exhibitors hooked up with the First National franchise, then we began to feel the competition very keenly.

○ *Adolph Zukor—By Defendant—Direct*

Q. That is, in addition to these major exhibitors in the major cities, they had sub-franchised some 300 or 3500? A. Up to that time.

Q. (Continuing) Exhibitors in smaller cities? A. That is right.

Q. Which bound them all to buy First National rather than Paramount or Famous Players-Lasky? A. That is right.

Q. Did you hear anything about the consequences of that development on Famous Players distribution in the South?

→ A. Yes.

(853)

Q. From whom did you hear it and what did you hear? A. S. A. Lynch, who represented us in the South, came to see me and told me that he is having a hard time in selling the product in the South.

Mr. Wright: If the Court please, I think this is not only irrelevant, immaterial, as I think the rest of it is, but wholly incompetent as to what Lynch told him at that time.

Mr. Seymour: I do not deny that it is hearsay, if there is objection to it, but it was the purpose of this, of course, to show how Paramount happened to get into the theatre business and this is one of the factors. It is technically objectionable and I won't press it.

Judge Hand: It certainly is.

Q. As a result of conversations which you had with Mr. Lynch, who was distributing Famous Players products in the South, did you discuss with your fellow directors in Famous Players the question of having Famous Players acquire an interest in theatres? A. I did.

Q. At that time what was the First National program of production, do you remember? Were they looking toward a program of producing a number of pictures a year? A. They had.

Adolph Zukor—By Defendant—Direct

Q. Did they contemplate producing as many as 50 pictures a year? A. That was the general impression.

(854)

Q. And at that time how many changes a week were they leading exhibitors of the country making? A. About once a week.

Q. And the smaller exhibitors? A. Smaller, twice a week; and further, down the line.

Q. What would have been the effect on Paramount's or Famous Players' opportunity to license its pictures of having the major exhibitors exhibit First National pictures, 50 pictures, and the smaller exhibitors exhibit 50 pictures? A. If we couldn't have an outlet in the first-run houses throughout the country, we wouldn't be able to recoup the cost of the negatives let alone make a profit; but we could not exist without first-run representation.

Q. Would that also have affected your revenues in subsequent runs? A. It definitely did.

Q. Would it have had any effect upon your ability to retain your few remaining stars? A. It did.

Q. Did you at or about this time that you had this meeting with the exhibitors in Los Angeles, which you told us about and where you did not get anywhere, did you at that time believe it would be desirable for producers and distributors to stick to production and distribution? A. Yes.

Q. And not go into exhibition? A. Yes, I did.

Q. And you were unable to persuade the exhibitors of

(855)
that? A. That is right.

Q. And did you then or shortly after change your own view on that subject? A. Well, I have.

Q. I think you told us that you did discuss the question of having Famous Players acquire an interest in theatres with your directors? A. Yes.

Q. Was it also discussed with others? A. In the organization?

Adolph Zukor—By Defendant—Direct

Q. Yes, and outside. A. Well, it was generally talked about. It was not—

Q. What was the upshot of your discussions and your consideration of the problems which Famous Players was faced with at that time? A. Well, after Lynch had represented Paramount down South and he came up and told us about the difficulties he had in selling the product the same as in the past, then we agreed to go in jointly and buy theatres in the South. That was our first, as I recall it.

Q. You did decide to acquire some interests in theatres? A. We did.

Q. Then the first effort in that direction was with Lynch in the South? A. Yes.

Q. Was Southern Enterprises formed? A. So Southern Enterprises was formed and Lynch owned 50 per cent and we had the other 50 per cent.

(856)

Q. That was sometime around 1919, 1920? A. 1919, yes.

Q. And that company acquired theatres in the South? A. It did.

Q. Were those theatres just first-run theatres in large cities? A. No, they were all kinds.

Q. Some of those theatres were in smaller cities? A. Yes.

Q. Was there any particular reason for acquiring an interest in theatres beyond the first-run theatres in the large cities? A. Yes, because there were sub-franchise holders in the smaller communities and they had offered quite a resistance to buying our pictures.

Q. Did you consider it important to retain your market not only in the big cities, but also in some of the smaller cities? A. Yes, sir.

Q. At about the same time did you acquire some interest in theatres in New England? A. Yes, we did.

Q. From whom was that interest acquired? A. Mr Black, Alfred Black, I believe it was. He had a number of

Adolph Zukor—By Defendant—Direct

theatres in New England and we acquired 50 per cent interest in his chain of theatres.

Q. Did they include some theatres in smaller places, too?
A. Mostly.

Q. As to both Southern Enterprises and the Black Circuit subsequently you acquired the balance of the interests
(857)

of the other owners? A. That is correct.

Q. Who managed the theatres in the South? A. Mr. Lynch managed the theatres in the South and Mr. Black managed the theatres in New England.

Q. Did you about the same time arrange to acquire an interest in a theatre in St. Louis? A. Yes; there was a theatre being built in St. Louis and we acquired an interest in that theatre.

Q. Was there a First National franchise owner in St. Louis? A. Yes, there was a First National franchise holder in that same neighborhood, to whom we couldn't sell any of our product.

Q. Were there some other theatres at about the same time you acquired an interest in? A. He had some interests in some other theatres, and I think we were negotiating to acquire them but we could not get together with his associates and I don't think we had acquired any other interests to the best of my recollection.

Q. Around 1925 or 1926 Paramount acquired an interest in some other theatres, did it not? A. Yes, sir.

Q. Did any information come to you as to the activities of any of the distributor competitors of Paramount in that regard? A. Yes; at that time there were other producers actively engaged in acquiring theatres throughout the country.

Q. Did you learn of their activities? A. Yes.
(858)

Q. Did you compete with them for acquisition of interest in some of these theatres? A. We felt that we had been com-

Adolph Zukor—By Defendant—Direct

peting with them before, when we acquired circuits, yes.

Q. What was your interest in acquiring circuits in competition with the other distributors? A. We acquired the interest in the circuits because we wanted to perpetuate our outlet for the product, mainly.

Q. From 1925 or 1926 on, for several years, Paramount continued to acquire some interest in theatres in various sections of the country? A. Yes, sir.

Mr. Wright: What was that last date mentioned?
(Record read.)

Mr. Seymour: "on", until about 1929.

Q. Was there also some acquisition after 1929, Mr. Zukor? A. Yes, I believe so.

Q. In connection with Paramount's acquisition in theatres was there ever at any time any agreement or understanding with others, with other distributors or producers as to the territories in which Paramount should acquire its interest in theatres? A. No.

Q. In addition to acquiring an interest in existing theatres, did Paramount also build some theatres? A. Yes.

Q. And in 1919, when you decided that Paramount Famous Players then—should acquire some interest in the (859)

atres for the reasons you stated, did you then have in mind acquiring the particular theatres in the particular areas which Paramount eventually acquired over the entire period? A. No, we had no such policy.

Q. Was each of the problems of acquiring an interest in a circuit and what kind of interest to acquire and where it should be, a matter decided on the merits when the problem arose? A. Definitely on the merits.

Q. And sometimes Paramount acquired a 50 per cent interest, and sometimes it acquired a 100 per cent interest? A. Yes.

Adolph Zukor—By Defendant—Direct

Q. And sometimes it acquired less than 50 per cent interest, is that right? A. That is right.

Q. Generally, what was the purpose of acquiring an interest in theatres? A. The main reason was to have a permanent outlet for our product, and, of course, while we acquired theatres, we were careful to see that we should make our investment so the investment in itself would also bring a return.

Q. When Paramount first went into the acquisition of theatres, or at any later time, was any one of these acquisitions for the purpose of monopolizing the exhibition of motion pictures in the United States? A. No, sir.

Mr. Wright: If the Court please, that is obviously incompetent. He is incompetent to testify in those terms.

(860)

Judge Hand: It doesn't have very much weight, that kind of testimony.

Q. Do you consider that at any time Paramount did monopolize the exhibition of pictures in the United States? A. No.

Mr. Wright: Same objection.

Q. From the beginning of the theatre acquisitions, Mr. Zukor, did Paramount set out to be the largest company in the motion picture business? A. Our aim was to be the best company, make the best pictures.

Q. But in 1919 you did not set out to reach a particular size or — A. No.

Q. (Continuing)—or reach a particular interest in theatres? A. At any time.

Q. From your observation of the industry from 1912 on, Mr. Zukor, has the production of motion pictures been highly competitive? A. Highly competitive at all times.

Adolph Zukor—By Defendant—Direct

Q. Are there new producers of motion pictures constantly coming into the field? A. All the time, every year.

Q. Are there more new producers today, more new independent producers—and I use that in the sense of being not defendants in the suit—are there more today than there were even ten years ago? A. There are quite a number of independent producers today, and I cannot make the exact comparison as to how they compare in numbers, but there (861)

were, each year, quite a number of independent producers that came into the business.

Q. Has Paramount's interest in theatres in any way interfered with the opportunities for new producers?

Mr. Wright: If the Court please, that is again a question he is not competent to answer.

Mr. Seymour: This is the dean of the business and I think he is the man who can tell us about it.

Judge Hand: I do not know that it does any harm. It doesn't do any good, to let him make such a general observation as he may.

Mr. Seymour: We will prove the rest of it. These are the dean's observations and we will call the other members of the faculty before we get through.

Q. From your observation has distribution of motion pictures always been highly competitive? A. Yes.

Q. And would you say that the exhibition of motion pictures has always been highly competitive? A. Yes.

Q. Is Paramount in competition with, not only the other defendants in this case, but with all independent producers and distributors and exhibitors? A. In competition with the industry, yes, sir.

Q. At all levels? A. In all branches.

Q. Do you consider that Paramount's interest in theatres

Adolph Zukor—By Defendant—Direct

has had any effect on its ability to produce fine pictures? (862)

A. A great deal.

Q. Would you explain that? A. Well, due to the number of pictures—number of theatres that we have, we are sure of our outlet, that we can exhibit our products, we are able to invest in the best type of pictures, that cost the most money, as we have a definite, certain outlet, for our product.

Q. How does the cost of feature motion pictures today, average cost of feature motion pictures today, compare with what it was when you first went into the business? A. When we first started in it the cost of a negative ran between 40 and 60 thousand dollars, and gradually each year thereafter increased and it continued to increase up to today, so that a first class picture today, with known stars and known directors and a good story, will run anywhere from a million and a half to two million dollars in cost.

Q. And do some pictures run more than that? A. Some pictures run even over three million dollars.

Q. From your experience in the business do you consider the production of the motion picture a speculative or a risky matter? A. It is highly speculative.

Q. Have you any interest in any other producer, exhibitor or distributor of motion pictures? A. No. (863)

Q. Prior to the time, that is, in 1919, when Paramount, or Famous Players, first acquired any interest in theatres, were pictures distributed on the basis of successive runs? A. We sold our pictures then as a season's output at one time.

Q. But were the pictures shown in successive runs, that is, first-run in the large theatres? A. First-run was then in vogue just the same, where the best theatre in the community was the first-run house and showed the picture first before

Adolph Zukor—By Defendant—Direct

any other smaller community, or smaller theatre in the same community, showed the picture.

Q. Was there also something which, whether it was called clearance or not, was clearance as we know it today between runs? A. I am not so familiar with the clearances, with the distribution end of the business, but I feel that there was always a difference between the first-run. There was a lapse of time between the first and subsequent runs. Just what they consisted of or whether it was organized all through the country on the same basis or the same way, I don't know.

Q. What is your best recollection as to whether prior to 1919 some pictures were licensed to exhibitors on a percentage basis? A. Yes, there might have been a few, far between, that were percentage.

Q. But there are more now than there were then? A. Oh, (864)
yes, have a great many.

Q. What is your best recollection as to whether prior to 1919 there was any reference in license contracts to admission fees? A. The admission fee we had in the very beginning. When we started to make feature pictures, we had a clause that they would have to charge ten cents, I believe, instead of five cents.

Q. And had the admission fee matter been familiar in show business long before motion pictures were produced? A. Oh, yes.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to restrain competition in the production, distribution and exhibition of motion pictures in the United States?

Mr. Wright: The same objection.

A. No.

Adolph Zukor—By Defendant—Direct

Mr. Wright: Same objection we made before to that question, as calling for a conclusion. It is for the Court rather than the witness.

Judge Hand: Overruled.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to aid and assist one another in the loaning and exchanging of production personnel and to deal with one another on uniform, non-competitive terms?

(865)

Mr. Wright: Same objection.

A. No.

Judge Hand: Overruled.

Q. Has there been any agreement or understanding to your knowledge to withhold any of the production personnel and equipment from any producer of motion pictures? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude independent producers from access to production personnel and to withhold production equipment owned by the defendants or any of them on the same terms on which they are made available to the defendants in this case? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to fix the terms upon which motion pictures would be licensed for exhibition to any exhibitor in the United States? A. No.

Q. Has there been or is there to your knowledge any agreement among the defendants or any of them to license any pictures for exhibition in any theatre before the pictures have been produced and before any exhibitor has had a fair opportunity to estimate the value and character of the films

Adolph Zukor—By Defendant—Direct

licensed and before such films have been completed or trade-
(866)

shown? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to condition the licensing of one or more films or group of films upon the licensing of another film or group of films?

A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to condition the licensing of film in one theatre or group of theatres upon the licensing of film in another theatre or group of theatres? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to enter into long term franchises with circuits of theatres or to suppress competition offered by competing theatres during the terms of such long term franchises or to preclude independent distributors from licensing their pictures to those circuit theatres? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to discriminate with respect to the license terms granted to circuit theatres because such theatres are part of the circuit? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any
(867)

of them in licensing their pictures to favor the theatres in which the defendants or any of them had an interest against the theatres of exhibitors not affiliated with any producer-distributor with respect to run, clearance, license fees or any other terms of licensing? A. No, sir.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any two

Adolph Zukor—By Defendant—Direct

or more of them to license pictures for exhibition in the theatres in which one of the defendants had an interest, on condition or in consideration of another licensing its pictures with respect to the pictures distributed by the other?

A. No.

Mr. Seymour: I am awfully sorry that these questions are so elaborate, but they are designed to negative the charges in the complaint which the Government has not abandoned, and I am asking the questions.

Mr. Wright: Can't we stipulate that some representative of each defendant would take the stand and negative the charges in the complaint in the terms of the complaint? I suppose that would take care of it for all defendants at once.

Judge Hand: Why isn't that so?

Mr. Seymour: Well, I would like to run through these and then I would be willing to consider it. I have only a few more of them.

(868)

Judge Hand: All right.

Mr. Seymour: Then I would be willing to consider such a stipulation rather than burdening the Court with asking other witnesses from our company these questions, but I would like to think about it.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude independently produced motion pictures from theatres in which the defendants or any of them had an interest? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude unaffiliated exhibitors from the operation of competing first-run theatres in cities and towns where

Adolph Zukor—By Defendant—Direct

theatres affiliated with defendants or any of them are located? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude unaffiliated exhibitors from operating competing theatres on the same run as the subsequent-run affiliated theatres in the cities and towns where affiliated theatres are located? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to use the first and early run affiliated theatres to (869)

control the film supply, run, clearance and admission price of operators of competing unaffiliated theatres in the cities and towns where affiliated theatres are located, or elsewhere? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them as to the terms upon which each or any of them would license their film to unaffiliated exhibitors? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to deprive any theatre operator of the supply of film or to withhold film from an unaffiliated exhibitor or to limit the terms and conditions on which licenses would be made to any unaffiliated exhibitor? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to divide the available films among the affiliated theatres owned or controlled by two or more producer-exhibitor defendants located in the same competitive area without competitive negotiations? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them not to compete with one another in the licensing of

Adolph Zukor—By Defendant—Cross

motion pictures to be exhibited in cities or towns where two or more of them had interests in theatres? A. No. (870)

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to enter into joint agreements with respect to a theatre whereby the film buying control or proceeds from the operation thereof is divided between two or more exhibitor defendants for the purpose of restraining competition unreasonably or monopolizing exhibition or distribution with respect to such theatre? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to refrain from building, buying or offering to lease theatres in areas where they might compete with existing affiliated theatres? A. No.

Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to acquire a monopoly or to monopolize the business of exhibiting motion pictures in the United States or any city or town thereof? A. No.

Mr. Seymour: You may inquire.

Mr. Wright: Are there any other defendants who wish to inquire?

Mr. Seymour: Does any defendant wish to examine Mr. Zukor?

Mr. Caskey: We are content.

(871-2)

Cross-Examination by Mr. Wright:

Mr. Wright: I simply want to make a motion for the record first to strike out all of Mr. Zukor's testimony as either irrelevant and immaterial or incompetent. I assume that will be overruled.

Adolph Zukor—By Defendant—Cross

Judge Hand: Motion denied.

Mr. Wright: I just want to ask a couple of questions.

Q. On that ten-cent admission that you talked about back in 1919, that was just a printed restriction in the form that was of general application, isn't that right? A. That was prior to 1919. In 1919 the admissions were much higher. When I referred to insisting on a ten-cent admission, that was in the beginning, 1913 and 1914.

Q. It was not until much after 1919 that you fixed admission prices for particular runs—graduated them in accordance with the runs? A. That was to have been higher than ten cents, because admission prices have gone up gradually.

Q. Yes, but I say, it wasn't until several years after 1919 that the present practice of fixing a different admission price for different theatres arose, isn't that right? A. I don't recall just when that was.

Q. You don't know when? A. No.
(873)

Q. I believe you said this ownership, the acquisition as far as Paramount, stopped in about—that is, by 1929 or 1930 you had pretty much the pattern of theatre control that you have now, is that right? A. That is right.

Q. As a matter of fact, it was about 1930, was it not, that you reached an agreement with Warner Bros. to stop invading each other's theatre-operating territories? A. We never had such an agreement.

Q. Do you remember what happened then, that prior to 1929 and 1930 you had been moving into areas where Warner was operating and Warner had been moving into some of your areas? A. We have never had any agreement with anybody where we would go or where we would buy theatres.

Q. Yes, but I think you did not get the last question.

Adolph Zukor—By Defendant—Redirect
Y. Frank Freeman—By Defendant—Direct

(Last preceding question read.)

The Witness: No doubt we had, because we did not stop to figure whether Warner was in any area or was not.

Q. Then after 1930 you did not move into areas where Warner was operating and they did not move into yours, did they? A. That I don't know.

Mr. Wright: That is all.

Redirect Examination by Mr. Seymour:

Q. You do know, Mr. Zukor, that there was never any agreement with Warners or anybody else about where you or they should operate or what you or they should do? A. Not as far as we were concerned.

(874)

Q. You never made any agreement with Warners or anybody? A. I never made an agreement with anybody.

Q. There was no agreement not to go into any territory where Warners had theatres or for Warners not to go into territory where Paramount had theatres or an interest in theatres, is that right? A. That is right.

(Witness excused.)

Y. FRANK FREEMAN, called as a witness on behalf of defendant Paramount, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Freeman, are you connected with the defendant Paramount Pictures, Inc? A. I am.

Y. Frank Freeman—By Defendant—Direct

Q. What is your connection with that company? A. I am a vice-president and, until October 1944, I was in charge of studio operations in Hollywood.

Q. Is your headquarters still in Hollywood? A. Yes.

Q. You have come on here for the trial? A. Yes.

Q. Are you still generally familiar with the developments in the studio? A. I am.

Q. You were head of the studio from what year until 1944? A. December, 1938, until October, 1944.

Q. When did you first enter the motion picture business? A. 1914.

(875)

Q. Will you tell us briefly about the nature of your connection with the business from 1914 to 1922, when you left it for a time? A. First connection was manager of a theatre, Fitzgerald, Georgia; later I became associated with Mr. S. A. Lynch in the operation of motion picture exchanges in Atlanta, Georgia; later in the development of theatres; I assisted in the acquisition of theatres in the Southern States. Subsequently, general manager in charge of distribution of Triangle Pictures. And then later associated with Mr. Lynch in the operation of the business of Southern Enterprises in the South. I severed my connections in December, 1922, was not in the motion picture business from that time until 1933.

(876)

Q. I will come to that. I just want to ask you this: Southern Enterprises was the organization which Mr. Zukor has just mentioned in which Mr. Lynch and his colleagues and Paramount had a 50-50 interest, is that right? A. Yes.

Q. And prior to that time, prior to 1919 you had been working with Mr. Lynch distributing Paramount's, or, as they were then called, Famous Players Pictures in the southern territories, is that right? A. That was true up to 1917.

Y. Frank Freeman—By Defendant—Direct

And from 1917 until 1919 I was in New York having the distribution of Triangle Pictures.

Q. You came to Paramount in 1933? A. Yes.

Q. And in what capacity did you come? A. To work in connection with real estate.

Q. Did Paramount go into receivership in 1933? A. Yes.

Q. And subsequently into bankruptcy? A. Yes.

Q. And it came out of bankruptcy or out of reorganization in 1935? A. Yes.

Q. And what were your duties between 1933 and 1935?

A. During 1933 I continued to work in connection with real estate properties and reorganization of the various properties that were then in receivership under the trustees in bankruptcy of Paramount-Publix.

In 1934 I served under the trustees as head of the New York office Theatre Division and continued in that capacity (877)

until the reorganization of Paramount in 1935, and thereafter, until 1938, I worked as vice-president in charge of theatre operations for Paramount Pictures, Inc.

Q. And then in 1938 you went to Hollywood in charge of the studio? A. Yes.

Q. And between 1935 and 1938 what was your official title? A. Official title was vice-president in charge of theatre operations.

Q. Were you also a director. A. I was a director, yes.

Q. I would like you to tell us something about the studio or production department of Paramount. First give us a general notion of its organization. A. The Paramount Studio in Hollywood is composed of a plant covering approximately 30 acres of ground, 240 or 250,000 square feet of stage space, 18 stages; executive buildings; mechanical equipment; technical buildings of various kinds; and an organization of people, actors under contract to Paramount, directors under contract to Paramount, producers under con-

Y. Frank Freeman—By Defendant—Direct

tract to Paramount; story properties that have been acquired by Paramount over many years; and a personnel organization of departments, department heads, people working under them. It employs—

Q. Tell us a little about them. A. It employs at its peak about 3500 people.
(878)

Q. Tell us about the general type of departments. A. Well, the talent department makes deals on contracts with personalities. The legal department handles all of the legal phases of the work. The story department supervises the acquisition and purchase of story material for making motion pictures. The executive producer supervises the creative talent and the casting and the final decision of certain scenes and things that go into the pictures, and approval of scripts.

Also in the story department the supervision of the writers takes place.

The so-called back lot where the physical operation is carried on is under the head of various departments, the production department, the camera department, the sound department, the wardrobe department, many groups, all headed under the one general manager in charge, or vice-president in charge of operations.

Q. Did you tell us how extensive the studio was, how much land it covered? A. I made that statement at the beginning; it covered approximately 30 acres of ground.

Q. Now, can you tell us approximately what sort of an investment the studio represents? A. It represents over the years an investment of millions of dollars.

Mr. Wright: If the Court please, I do not see how this is material, but if it is it seems to me it can cer-

(879)

tainly be put in in the form of a statement, without taking the time to getting it in this way.

Y. Frank Freeman—By Defendant—Direct

Mr. Seymour: Well, I am going as fast as I can, if your Honors please; but the Government's charge and its failure to respond to suggestions to facilitate this have required us to go forward, and I think it will be more revealing to the Court to have it adduced by oral testimony. When we reach a point where I think we can properly stipulate, we will certainly try to do it.

Judge Hand: Well, go on.

Q. Now, how is a production program planned, Mr. Freeman? Tell us with whom it is discussed and what period is covered and what ingredients go into the planning of a program.

A. We generally have a meeting in New York. I come in from the Coast, meet with the president of Paramount, with the head of the sales, distribution department, head of the foreign department, the advertising manager; and we discuss on a broad scale as to the total amount of investment we think we can make in a completed group of pictures for that year. And having determined that as a base, we then try to see what number of pictures we can make for that total sum of money. That is determined by the personalities available to us, the story material available, the capacity of the studio to make the pictures; and I go back to Hollywood with that as a general outline, and then we try (880)

to fit in what we have there to that program, knowing that it is not humanly possible for any studio to sit down 12 months ahead and plan and know what it will make within the 12-month period. Things happen, events occur, personalities are unavailable; it continuously changes. It is not anything that can be done upon a formula basis, like you can plan a production schedule of mechanical things.

Q. What problems of trying to appraise the public taste over a period of time are involved in planning a program?

A. We try at our first meeting to get all of the information

Y. Frank Freeman—By Defendant—Direct

we possibly can from the sales and distributing department to help us on the type of picture we will make by having them tell us the types of reception of types of pictures by the public, and the personalities in those pictures, and all the information we possibly can obtain from them in that respect.

Q. Have there been any special problems, for example, during the war years in trying to plan a program? A. Well, the problem during the war years has been that a great deal of material has naturally been available to the studios from the things that happened during the war. Producers have taken ideas and made pictures around them; they have seized upon stories that have human interest—
(881)

Q. Can you give us any recent examples of that? A. Well, Paramount has one in the story of Dr. Wassel, which came from a radio speech by the President of the United States praising the great character of this man down in Java. We heard it over the radio, and within 24 hours we started the production of a motion picture, which had not been planned; and that is one of the things that I say you cannot plan ahead 12 months ahead. You are changing all the time.

Q. Does the unexpected success of a new play or new book, or something of that kind, affect the program? A. A story or a book may come out with very popular appeal; and if you are fortunate enough to buy that on the competitive market, why, you go ahead and make a motion picture out of it. A stage play may be produced that is very successful, and we attempt to buy that and make a picture out of it; and we would have no knowledge of that in January of any year when it might not occur until May or June or in the latter part of the year.

Q. Can you tell us just a little about how you budget your program? A. I stated that we try to arrive in the first

Y. Frank Freeman—By Defendant—Direct

instance at a total budget for the entire production schedule, based upon past experience of the possibility of revenue from the program, and from that point we try to break that down into the number of pictures we can make based upon the (882)

material and the personalities and the capacity of the studio to do it.

Q. How does the present year's production of Paramount compare with its production before the war? A. Before the war Paramount produced between 55 and 60 pictures annually. At present they are producing between 28 and 30 annually.

Q. And what is the chief reason for that difference; or what are the chief reasons? A. Well, one of the reasons is that during the war there has been our inability to get materials to make pictures; restrictions. The second reason is that prior to the war we made more cheaper pictures than we have made since 1938.

Q. Does the fact that some of the stars are in the service affect that too? A. To some extent, yes, but not to any great extent. It restricted us in maybe strengthening our pictures to the degree we would like because of our inability to have these stars.

Q. Has there been an increase in the cost of pictures since you first went to Hollywood in 1938? A. Yes.

Q. Can you give us an idea as to the general increase and perhaps how the highest cost pictures compare over that time? A. At present it costs 100 to 150 per cent more to produce a top bracket picture than it cost to produce in 1937-38.

Q. Can you give us some figures, so we will have that in (883)

mind? A. A picture that we could make in the top bracket with top stars and personalities for a million, 1,150,000, will cost now from two and a quarter to three million dollars.

Y. Frank Freeman—By Defendant—Direct

Q. Does Paramount make several pictures costing a million or more each year, in each year's program, or a number? A. Do we make?

Q. Yes. A. Yes.

Q. Can you give us some rough idea of the overall cost of a program? A. The cost of the program in 1944 to Paramount Studio was \$28,000,000.

Q. Now, where do you get your story material for pictures? A. We have a story department that reads all of the material available in the field of literature, books, magazines. They keep us advised as to those stories which offer possibilities of pictures. They are further read and discussed.

Q. Can you give us any general impression as to how many stories are examined by the story department annually? A. I think in the Paramount studios it ranges from six to ten thousand annually; some years maybe a little higher than others.

Q. Now, are new novels and plays a source of material? A. Yes.

Q. Can you tell us something about how they are ac-

(884)
quired and whether there is competition for them? A. In general a book or story—the handling of the sale of that by the author is handed over to an agent employed by the author. The agent is familiar with all of the producer companies and the producers that work for them, and he starts his approach by going to them all, submitting the story generally, developing a bidding contest, using all of the tricks of the trade that he can to sell it to the highest bidder for the highest price he can obtain for it.

Q. Does that include producers that are not defendants in this case? A. Yes.

Q. And the final upshot or the price which the agent arranged and which the author gets is the result of competition among all of them, is that so? A. Yes.

Y. Frank Freeman—By Defendant—Direct

Q. Can you give us some idea of the range to which those prices sometimes reach? A. Well, in stage material it ranges from \$350,000 to \$500,000.

Q. Have you had any recent experience in the kind of prices that competitive bidding brings about for Paramount?

A. We have paid as high as \$450,000 for a stage play, for the rights to make a motion picture from a stage play.

Q. How about novels and other stories? A. We have paid as high as \$150,000 for novels, books.

Q. Now, in general, as to the material which is available, (885)

like stage plays, novels, stories, and so on, where the author still has rights—are they acquired on a competitive basis? A. Yes. I know of one deal made for a stage play very recently which gives a substantial advance against 50 per cent of the entire profits of the production. That also happened.

Q. Now, tell us something about development of new talent in the motion picture industry. What efforts are made with respect to new talent, actors, actresses, writers and so on? How are they discovered and brought along? A. Actors are found in one of several ways: They come from the stage, radio, and then from small community playhouses; and in some instances with no experience whatever. Now, when you find a person on the stage or in radio who has had the experience in the theatre world, that person is also represented by an agent; they have already engaged an agent, and an agent represents them. So he presents them to you. Even though you might have seen them on the stage and say, "I like that person," or "He offers possibilities in pictures," you would make your deal with the agent.

Q. Does the agent go around from one producer to another? A. The agent immediately, even before you see them, possibly, has contacted studios and tried to find out the market price for the person and to sell that person to

Y. Frank Freeman—By Defendant—Direct

(886)

the studio that can pay the most money and offer the chances of developing this particular person.

Q. Now, do you have a department or members of your organization who are seeing stage plays and observing the developments in radio in an effort to find new talent? A. Yes.

Q. And usually before you deal with them the agent appears and begins the process of competitive bidding, is that right? A. Yes.

Q. Now, does that apply to writers as well? A. That applies to writers who in their contact with the studios are represented by the agents. The field from which you find writers is not the same. You will find sometimes a person who has written a book that has been successful, and you sometimes have young people from colleges, and you place them in a training school. Those people are not represented by agents in the beginning.

Q. Does Paramount have a staff of writers at the studio? A. Yes.

Q. And do you employ special writers on special projects from time to time? A. Yes; and also under long term contract.

Q. Now, tell us something about the competition, if there is some, for the acquisition of directors' service and the services of technicians of various kinds. A. There is complete (887)

competition among all the studios for any of the highly trained personnel in the technical fields, and also for directors whose contracts may be expiring at any studio or at any producer. All of those people are represented by agents, and the agents immediately approach all studios and all producers to make the very best deal for his client that he can possibly make.

Y. Frank Freeman—By Defendant—Direct

Q. Why is there that competition among the studios? A. Hollywood attempts to produce around 400 to 425 pictures annually, and the personalities, the creative talent that is available makes it necessary to get these people in order to try to produce the best pictures.

Q. Now, I asked you about new acting talent and how it was obtained. I want to ask you something about stars and those who are not only the outstanding stars but perhaps the subsidiary stars. Having gotten a star under contract, take a star who has not yet proven himself or herself in pictures, what happens? A. You try that person out in parts that you think are suitable; you start a publicity campaign to create interest on the part of the public in that particular personality; and if you find the reception on the part of the public good, why, you continue to bill that particular personality and place him in more important parts in the next picture; and using all of the showmanship that (888)

you have at your disposal you try to develop him to the point where the public will be interested in going to see a motion picture that he might have a part in.

Q. Now, if you get a young actor or actress under long term contract, I assume the starting salary is rather smaller than that of an established star. Does the actor or actress continue to work at the contract rate through the life of the contract? A. No.

Q. What happens? A. At any point where there is any evidence whatever of success after the first newspaper critic says, "This girl or this person looks fairly good," the agent comes in to see you the next morning, and he says, "Now, based upon this, this is not a fair salary," although you may have had them under contract possibly no more than six or eight months or one year which has gone by. And it has been a practice in the industry that that contract is renegotiated. A person who had a starting salary of \$150 a

Y. Frank Freeman—By Defendant—Direct

week, and proven that they had box office value, you would then make a new contract, and possibly the new salary would be \$500 a week starting, \$750 for the next year's option; \$1000 for the succeeding year, and so forth.

Q. Why do you revise these contracts when you are not obligated to? A. In order to keep making motion pictures.

Q. Now, what happens when a contract with a star, (889)

whether revised or not, is about to run out? Is there any effort made by other studios to take the star away? A. Every effort that is possible is made by all studios to engage that star to work for them if their contract has expired with any other producer.

Q. How about before it has expired, before the contract has expired? Is there effort by other studios and other producers to arrange for the star to come to them after the termination of the contract? A. Yes.

Q. Can you give us any examples of that? A. I can give you of my own knowledge an example that Paramount had with Fred MacMurray.

Q. What happened there? A. He was under contract with Paramount and had a year and a half to go, and he made a deal with Twentieth Century-Fox and started working for them at the expiration of his contract.

Q. Did they offer him more money, better terms? A. Yes.

Q. Has that happened to Paramount with other stars? A. It has happened; it has been tried, but sometimes we were successful in beating them.

Q. Sometimes the other producer is able to take him away and sometimes you are able to meet the terms? A. That is right.

Q. Now, is there any limitation on that kind of competi- (890)

tion as to what producers try to take other producers' stars away from them? A. No, sir, not that I know of.

Y. Frank Freeman—By Defendant—Direct

Q. And does that kind of competition occur not only between defendants who have an interest in theatres but also with defendants who have no interest in theatres, and also with producers who have not been joined by the Government in this case? A. It occurs with all people that make motion pictures in Hollywood.

Q. And are independents constantly trying to take stars away from Paramount and other companies? A. Yes. That is, I want my answer to be, when their contracts with Paramount have expired.

Q. I understand that. I am not talking about an attempt to break contracts but an attempt to get them away at the end of the contract term. And those negotiations begin before the end of the contract term, do they not? A. Yes.

Q. Now, in recent years has there come to be an increasing practice, or, at least, an increasing attempt by stars to reserve their rights in contracts with studios to make pictures away from the studios? A. Yes.

Q. And does that happen with high-priced stars of all the studios or most of the studios? A. It does with all of the high-priced stars at Paramount, and, I understand, it happens at the other studios.

(891)

Q. And, generally what you have testified here about the competitive situation for talent and material and so on, is, from your observation, applicable to all the studios, isn't it? A. Yes.

Q. Now, where the star reserved the right to play a picture away from the studio, does she also sometimes reserve other rights? Does she reserve rights in connection with any occasions when her services may be loaned to another studio, some right to approve material, and so on? A. If a star is important enough in their position in the industry, where any studio would take them, they will possibly insert a provision in their contract that if they are loaned out to any

Y. Frank Freeman—By Defendant—Direct

other producer, that they shall have the right to approve the story, the director, and maybe some other things.

Q. Now, we will come to that a little later, I think. A. Where they make an independent picture on their own, why, they have all of their rights; they just reserve the right to make an independent picture. When I say "independent picture," I mean to make a picture on their own under no control or direction of the studio to whom they might be under contract.

Q. Now, does Paramount from time to time have occasion to obtain stars and featured players and personalities from other producers? A. Yes.

(892)

Q. And what are the reasons for doing so? A. We make 30 pictures a year in which there are two to eight parts, you might say, in each picture; sometimes more. It is impossible for any one studio to carry on its payroll enough people that would be available for all of those parts. It just is not possible to do it.

Q. So what do you do when you need a star of that kind? A. We attempt to contact free-lance people—when I say "free-lance people", I mean people who are under no contract with any studio, to work for anyone—find out if they are available; make a deal with them if we can, and, if not, if there is some personality under contract to a producer or to a studio in Hollywood, we attempt to negotiate for borrowing that particular personality to play the part in the picture.

Q. Is the term borrowing and lending used for that in the language of the business? A. Those are the phrases used in Hollywood, or the terms.

Q. Now, do other producers from time to time have occasion to borrow stars, personalities and other talent from Paramount? A. Yes.

Q. And is that for the same reason that you suggested as to why Paramount sometimes does it? A. Yes.

Y. Frank Freeman—By Defendant—Direct

Q. What is the basis, when Paramount borrows stars or personalities, upon which the arrangements are worked out (893)

with the studio from which the borrowing occurs? **A.** The present arrangement is that the studio will simply say, "We will permit this person to work in your picture for a given number of weeks for so many dollars." If it happens to be a greater number of weeks, or if they happen to use the person a greater number of weeks, then we specify in the contract that for each additional week you use them you pay the pro rata amount for that additional week.

Q. Is the consideration for borrowing and lending always the payment of such much in cash? **A.** Not always, no.

Q. What other kinds of consideration are sometimes used? **A.** Sometimes there is a possibility of a personality involved at the borrowing studio that the lending studio might desire to obtain for a part in the picture. So negotiations take place as to whether you will loan back that personality in return. It sometimes happens that a studio wants to acquire from you story material that you have and you have not found any way to make a motion picture out of, and they think they can, so they would say, "If you will sell us that story, then we will loan you this personality." It is strictly a competitive trading proposition.

Q. Why is a studio willing to lend its stars, aside from these things you just mentioned where they borrow a star in (894)

return or get some other consideration in the story field, perhaps? Why are they willing to lend a star and receive cash for the star's period of being loaned? **A.** Well, in some instances the studio finds it impossible to use all of their available talent all the time that it is available to them under contract with a personality, and yet they have an obligation to pay that personality whether they use them in pictures or not. If an important part comes along with some good story

Y. Frank Freeman—By Defendant—Direct

at another studio, directed by an important-director, produced by an important producer, or if it comes along from an independent producer in that field, the studio that has that contract with this particular personality would feel they were recouping a certain sum of money that they had to pay out; they would be advancing the career of this personality and thereby selfishly helping their own position in creating a more valuable asset for the production of pictures. It might be that in the hope that at some subsequent time, having done that, that the studio might loan you a personality when you needed him in a motion picture. I think those are the major controlling reasons.

Q. How is the amount to be paid for the borrowing of a star worked out? Is that a matter of negotiation? A. Yes. I will speak for the Paramount Studio: In the loaning of a (895)

star, if we had a contract with star X to pay them \$100,000 per picture, and a producer wanted to borrow that star, and if in that year we had made, say, two pictures, could not make the third but had to pay for the third, it would cost that studio \$100,000. If, however, we had not made but one picture with that star a year, and still had to pay the total sum of \$300,000, we would charge \$133,500 so as to distribute the write-off of one picture among the pictures that are made—I mean \$150,000.

Q. You would try to get back at least the amount that you have to pay the star? A. Yes.

Q. And sometimes something more? A. Yes. With stars under weekly contract, and we have allocated two pictures annually to that star, we generally charge about one-third of the total annual salary.

Q. Now, does the studio have an interest in the vehicle in which the star is to be used by the borrowing studio? A. No.

Q. Is the lending studio interested in not having the star's value reduced, but enhanced? A. Yes, interest in hav-

Y. Frank Freeman—By Defendant—Direct

ing it enhanced, and definitely interested, of course, in not having it reduced in any way.

Q. Now, have there been occasions that you perhaps can mention when the reputation of a star has been enhanced in (896)

the hands of the borrowing studio? A. Well, I can go back and look over loans that have been made and things like that. I don't happen to remember offhand—

Q. Let me just mention a couple and see if it refreshes your recollection— A. I will say that we have borrowed people whose reputations, I think, have been tremendously enhanced by their use in the pictures. I will cite the example of Ingrid Bergman playing the part of Maria in *For Whom the Bell Tolls*.

Q. From whom was she borrowed? A. She was borrowed from Selznick.

Q. And is he an independent producer, not a party to this suit? A. Yes.

Q. How about John Wayne? A. I think the part we gave John Wayne in *Reap The Wild Wind*, the Cecil B. DeMille production, took him out of the category of more or less in the cheaper type pictures and placed him at one of the top—not one of the top, but way up in the list of leading men in Hollywood.

Q. And who was he under contract to? A. Republic Studios.

Q. Is that an independent producer not a party to this suit? A. I understand they are not a party to this suit. They have a studio.

(897)

Q. Are they an independent producer in that sense? A. Yes.

Q. Was Wayne under contract to Republic at the time his value was enhanced by Paramount's exploitation?

A. Yes.

Y. Frank Freeman—By Defendant—Direct

Q. And did he go back to Republic and make pictures for them? A. Yes.

Q. Now, is Shirley Temple another example of the advantages to the lending studio of lending a star whose reputation increased during the period? A. That happened before I went to Hollywood, but Paramount borrowed Shirley Temple from Twentieth Century-Fox when she was practically unknown and gave her a part in Little Miss Marker that overnight made her a top-ranking personality in the industry.

Q. Now, do you know, or, to your knowledge, has there ever been any agreement or understanding amongst the defendants to restrict the borrowing or lending of stars to the defendants in this case? A. I know of no such understanding.

Q. Did you ever hear of any such understanding? A. I have never heard of any such understanding.

Q. As a matter of fact, is borrowing and lending limited to the defendants in this case? A. It is not.

Q. Now, have you had occasion to loan stars to a number of producers who are not defendants in this case as well (898)

as to defendants in this case? A. Yes.

Q. And have you had occasion to borrow stars from a number of producers who are not defendants in this case? A. Yes.

Q. And isn't it the fact that the practice of lending and borrowing exists in the industry quite indiscriminately without regard to any question of whether a defendant has an interest in theatres or whether he is a defendant in this case, or anything else; it is just the practice between all the producers, isn't it? A. That is right.

Q. Now, can you give us some examples in recent years in which you have borrowed or lent stars from or to independent producers having no interest in this case? And I

Y. Frank Freeman—By Defendant—Direct

will let you have this list before you in case you want to refresh your recollection, with the Court's permission (handing).

Will you give us the name of the star and the name of the borrower or lender, the independent producer—

Judge Hand: He has got a long list there. He may familiarize himself with it. Why do you want him to read all of it?

Mr. Seymour: This list includes all borrowings and lendings. Now, the Government's theory, although I cannot tell from day to day whether they are
(899)

still standing on it, is that there was some kind of a restriction to have this practice between defendants. Now, I am not going into the extent to which it was done between defendants. There is no doubt it was done between defendants; but I am going to ask Mr. Freeman to cite instances of the catholicity of the practice, showing it was done between all producers, which I think can hardly be disputed. So I am not going to have him read the whole list, Judge Hand.

A. We in general have loaned our stars and personalities to all producers; and if you want me to—

Q. Give some examples. A. Nils Asther was loaned to Republic Pictures Corporation.

(900)

Mr. Wright: Does the list have the dates on there, and does it also have the information of the distributor who released the picture in question?

Mr. Seymour: I am not sure of that.

Mr. Wright: Why not put the whole list in with that data?

Mr. Seymour: We haven't got the names of the distributor; we have got the name of the independent producer who borrowed or loaned.

Y. Frank Freeman—By Defendant—Direct

Mr. Wright: Well, it would be easy enough, I suppose, to add to the list the name of the distributor.

Mr. Seymour: I am not going to ask him to prove the whole list but just a few examples of borrowings or lendings to independent producers; and then if at a later time you want to put it in, we will supply the information.

A. (Continued) We loaned Barbara Britton to the Bogeaus production for a part in "Captain Kidd." We also loaned her to the Crosby Productions, which was an independent picture producer under the direction of the Crosbys. We loaned Robert Benchley to an independent production, Abbott-Solomon-Buchman, which was the name of the company producing it. Also Robert Benchley to the Abbott-Herbert Corporation. These were independent pictures produced under the direction of Jack Skirball, at one time (901) associated with Frank Lloyd. We loaned Robert Benchley to the Manhattan Productions, the same group. We loaned Rod Cameron to Republic Pictures Corporation; Johny Coy to the Felix Young Productions, an independent producer; Richard Denning to Republic Pictures Corporation; Ellen Drew to Republic Pictures Corporation; Ellen Drew to the California Movie Company, which was an independent production; Ellen Drew again—no, I believe that was radio; I don't believe that was a picture—Ellen Drew to London Studios for a part in a picture. Albert Dekker to Republic Pictures Corporation; Albert Dekker a second time to the Republic Pictures Corporation. Virginia Dale, Republic Pictures Corporation. Yvonne De Carlo to the Cardinal Pictures Corporation, all of these independently-produced pictures. William Demarest to the Cinema Artists Corporation. Carl Esmond to Sam Wood Productions. Barry Fitzgerald to B. G. DeSylva Productions. Preston Foster to Edward

Y. Frank Freeman—By Defendant—Direct

Small Productions. Preston Foster to Edward Small Productions a second time; Betty Field to Lester Cowan Productions; William Holden to Principal Artists Syndicate for a picture; Susan Hayward—

Q. I think that is enough. There are other examples of lendings and borrowings? A. Yes, a great many.

Q. And those happen to be largely lendings that you refer to? A. Where we have people under contract to Paramount who have been loaned to others.

(902)

Q. Loaned? A. Yes.

Q. Now, have you borrowed some? Have you borrowed some from independent producers? A. Yes.

Q. I do not know that you need to go into detail, but, in any event, is it true that the practice of borrowing and lending stars prevails in Hollywood between all producers, independent, non-theatre-owning, and producers who have an interest in theatres? A. Yes.

Q. And is the practice, would you say, indiscriminate among them? A. Yes.

Q. Now, also are there occasions when Paramount rents either out or in equipment and props and costumes and things of that kind? A. Yes.

Q. Is that also done indiscriminately among producers? A. Yes.

Q. Is there any agreement or understanding to limit that practice to the defendants in this case? A. No.

Q. Can you give us an idea as to approximately how many independent producers there are in Hollywood at the present time? A. I think there are about 40, making all types of pictures. I mean by that, from the very cheapest westerns to the very highest price A-pictures.

Q. And that does not include the defendants in this suit?

A. No.

(903)

Judge Goddard: How many elsewhere?

Y. Frank Freeman—By Defendant—Direct

Mr. Seymour: Sir?

Judge Goddard: You confined your question to Hollywood. How many other independents are there?

Mr. Seymour: That is a good question, Judge Goddard.

Q. Are there other independents outside of Hollywood producing pictures? A. As far as I know, with very, very few exceptions, all pictures that are made in America are made in Hollywood; that is, except the so-called industrial films and pictures of that type.

Q. Now, as a matter of fact, is there an organization of 24 independent producers? A. The Association of Independent Motion Pictures Producers, headed by Mr. Donald Nelson, I understand has 24 members. I only know that by a statement made by Mr. Nelson.

Q. Is there also another organization of so-called independent producers containing a somewhat smaller number? A. There is the Society of Independent Motion Picture Producers composed of the group that produces the smaller bracket western pictures and action type pictures, generally released through P. R. C.

Q. Are there substantially more independent producers in Hollywood today than there were when you went there in 1938? A. Yes.

(904)

Q. Would you venture an estimate as to approximately how many more? A. A good many more, several times more than the number that were producing independently when I first went there.

Q. That has been a development of the last several years? A. Since I went to Hollywood in 1938.

Q. Now, are some of those independent producers very successful? A. Yes.

Y. Frank Freeman—By Defendant—Direct

Q. Have some of them produced some of the most successful pictures of recent years? A. Yes.

Q. Can you mention some of the pictures produced by independent producers? A. Selznick produced "Gone With the Wind"; "Since You Went Away"; "I'll Be Seeing You"; "Rebecca"; two or three other very important pictures. Sam Goldwyn has produced several very important pictures, the last one being with Danny Kaye, "Up in Arms" and one with Bob Hope, "The Princess and the Pirate"; and two or three with Gary Cooper that were very, very successful.

Q. Now, are the pictures of the independent producers widely distributed? A. Yes.

(905)

Q. Is there a constant demand for the pictures produced by independents as well as others? A. Yes.

Q. Do you know of any instance where an independent producer of a good picture has had difficulty in getting his picture distributed? A. I do not know of any, no.

Q. Do you know of any picture, having merit, produced by an independent producer or anyone else since you went to Hollywood, which did not get distribution? A. I don't know of any.

Q. Has Paramount from time to time distributed pictures produced by independent producers? A. Yes.

Q. Has Paramount ever refused, so far as you know, to distribute a picture of an outside producer which it could obtain on satisfactory terms? A. Not that I know of, but there have been independently produced pictures that we have been asked if we would meet certain terms, and we have said no.

Q. That is the reason I asked you. The terms were unsatisfactory? A. That is right.

Q. And those pictures were distributed by other distributors, is that correct? A. Yes.

Y. Frank Freeman—By Defendant—Direct

Q. Going back, Mr. Freeman, to the period when you were associated with Mr. Lynch, did you learn of the development of Associated First National? A. Yes.

Q. And can you tell us your contact with the development of that organization? A. I don't quite understand your question. My contact with the development of the organization?

Q. Let me put it this way. Did you learn of the formation of First National? A. Yes.

Q. And at that time you and Mr. Lynch, or Mr. Lynch's organization, were engaged in distributing Famous Players pictures in the South, is that correct? A. Yes.

Q. And did you learn of the banding together of the principal exhibitors of the United States to form First National? A. Yes.

Q. And did you learn of the development of sub-franchises by these exhibitors, bringing in some thousands of smaller exhibitors over the United States? A. Yes.

Q. And did you have occasion to discuss the impact of that development on the distribution of Famous Players pictures with First National franchise holders? A. Yes.

Q. Was there an occasion when you went to New Orleans and had a discussion about it? A. Yes.

Q. Will you tell us when that occurred? A. In March of 1919.

Q. Will you tell us what happened on that occasion? A. Well, we met with several of the First National Franchise holders, holding franchises in the Southern States. The Southern States I refer to are Texas, Oklahoma, Arkansas, (907)

Mississippi, Louisiana, Georgia, Florida, Alabama, Tennessee, North and South Carolina. We generally referred to them as the eleven Southern States. And at this meeting there were, in addition to the principal franchise holders,

Y. Frank Freeman—By Defendant—Direct

Mr. Hulsey, being the franchise holder of the States of Texas, Oklahoma and part of Arkansas, and Mr. E. V. Richards, representing the Sanger Amusement Company, that held franchises for Mississippi and Louisiana. There were present—

Q. First National franchises? A. First National franchises. (Continuing) —representatives of some then forty or fifty exhibitors. And they, at this meeting, asked our interests, S. A. Lynch Enterprises' interest, asked Mr. Lynch and me if we would be willing to join in, that they were planning to organize a booking and buying company, meaning by that a company that would buy pictures for a given theatre and also that they would book that picture to the theatre, and that their plan was that each theatre who joined the organization would pay five per cent of its gross receipts into the organization for management, for buying the pictures and for services to be rendered, and that the organization would serve any of its members who might be involved in a situation, to go in, and if necessary, take over his theatre and run it for him until it could be put back on a profitable basis. They said they held franchises for First National Pictures in the States of Texas, Oklahoma and Delaware, (908)

Arkansas, Mississippi and Louisiana, and that they would like for the Lynch Enterprises to place the theatres that were then operated by the Lynch Enterprises, amounting to some fifteen or eighteen, into the organization and for the Lynch Enterprises to own this company along with Mr. Hulsey, Mr. Richards and two or three other important exhibitors in the territory, and the details to be further discussed and worked out, but the Lynch Enterprises would manage the business in Georgia, Florida, North and South Carolina, and Tennessee.

At that time we had a contract with Famous Players-Lasky for the distribution of Paramount pictures and we

Y. Frank Freeman—By Defendant—Direct

told them that we had, and we told these people that we had an obligation to Paramount to protect the outlet for Paramount pictures in that territory and that we certainly would do everything in the world we could, to preserve and protect that against any competitive organization; and we felt under the situation of what was developing there that our obligation was to go and disclose it to Paramount, and tell them, and we intended to do that. If Paramount did not feel there was any threat to their future in this, that, after a frank discussion with them, we would come back and we might discuss some plan further, but until we had a chance to talk, (909)

we would refer it to Mr. Adolph Zukor, we would not want to make any further commitment.

Q. Did you after that meeting go with Lynch to see Mr. Zukor in New York? A. Yes.

Q. Did you report the meeting to him? A. Yes.

Q. Did you express any views to him about what Paramount ought to do? A. We told him that, insofar as the interests that we represented, the Paramount interests in the South, we felt it was a direct threat to its future; that these were exhibitors that controlled practically all of the important theatres in the territory, that is, in the Southwest territory, Texas, Oklahoma, Arkansas, Mississippi and Louisiana, and that if they should decide they did not want to play Paramount pictures, there would be no outlet for them in that territory.

Q. Was it shortly after that that Mr. Zukor advised you that Paramount had decided to acquire an interest in theatres down there? A. We first talked with Mr. Zukor. He said he wanted a few days to give the matter consideration and discuss it with his associates. Very shortly after the first meeting he notified us that he would be interested, that Paramount would be interested, in joining with the Lynch enterprises in the organization of a company.

Y. Frank Freeman—By Defendant—Direct

(910) Mr. Wright: All this conversation is improper. I have not objected to it because I wanted to get it over with, but if he can just say what happened there, it seems to me—

Mr. Seymour: It is almost over. Relax, it is almost over.

Q. Shortly after that, Southern Enterprises was formed with the Lynch interests having a half interest and Paramount having a half interest; is that right? A. Yes.

Q. What happened in the Hulse area—where was he a First National franchise holder? A. He had the franchise for Texas, Oklahoma and part of Arkansas.

Q. What happened to Paramount or Famous Players pictures in his area? A. He had associated with him in the territory several very important exhibitors operating—I say important exhibitors—operating in the larger cities and he threw out all Paramount pictures in the important cities of Texas, Oklahoma and Arkansas.

Q. So there was a time when Paramount pictures could not be shown in those important cities, is that right? A. Yes, sir.

Q. At or about that time did Southern Enterprises acquire an interest in some theatres in that part of the South? A. Yes, through a subsidiary corporation that they organized, known as Southern Enterprises, Inc. of Texas.

(911)

Q. I want to ask you a little about the theatre department of Paramount, Mr. Freeman. When you went to Paramount in 1933, had decentralization of theatre operation already taken place? A. Yes.

Q. Perhaps I should have asked you first, what was the method of operating theatres in which Paramount had an interest when you came to Paramount in 1933? Were they

Y. Frank Freeman—By Defendant—Direct

operated centrally or were they operated locally? A. They had been operating centrally in New York, controlled and operated out of New York. I wasn't any part of that. I wasn't there, but that had been their method of operation.

Q. When you got to Paramount, how were they being operated? A. Mostly by receivers.

Q. But at least they were being operated largely by receivers on the ground, isn't that so? A. Yes.

Q. Where they weren't operated by receivers, they were being operated by their local managers? A. Yes.

Q. I would like to have you tell us a little bit about the period when you were at Paramount in New York and while you were in charge of the theatre department as to the independence of the theatre department from the distribution department. Was the theatre department advising the distribution department as to the film deals made by theatres in which Paramount had an interest through their local (912)

managers? A. No, they were not.

Q. Was the distribution department advising Paramount—advising the theatre department as to the film deals which the distribution department was making in theatres in which Paramount had no interest? A. No.

Q. Did it keep the theatre department advised as to the film deals which were being negotiated or made with the theatres in which other defendants in this case had an interest? A. They did not.

Q. Would you as a director of Paramount have occasion to consider whether you thought it was desirable for Paramount to have an interest in theatres? A. I did not quite understand.

Q. You were a director of Paramount for a time? A. I was a director of Paramount, commencing December 7, 1935.

Q. Are you still a director? A. Yes.

Q. As a director of Paramount and an officer of Paramount, do you believe it is desirable, from Paramount's

Y. Frank Freeman—By Defendant—Direct

point of view and the point of view of Paramount's stockholders, for it to have an interest in theatres? A. Yes.

Q. Why? A. I feel that it offers the best chance of an outlet for pictures in different territories. It offers a chance to not be shut out by any combination that might want to restrict you from showing any, as happened to us in Dallas, (913)

Texas. And it gives to the distributing department a very direct knowledge of public appreciation of certain types of pictures, or dislike of certain types of pictures which the distributing department can convey to the studio and be helpful in deciding upon the production program. That is particularly helpful where the company must produce twenty-five motion pictures a year. It is much more necessary than it would be if I only had to make one motion picture, in which I could take all the elements of gamble on it. I have to follow through with a program of two pictures a month. And it is very important to the manufacturer to have knowledge that in going forward with that program that there is some protection to the gamble. The independent producer who makes one or two pictures, may take one or two gambles a year. I have to take, as head of the studio, twenty-six gambles, because every picture is a new formula; it is not tried or proven by the performance of the preceding picture. It is the only business, I think, that the product is manufactured out of human beings. The assembling of those human beings, to bring them together, and the making of the picture, is a very, very uncertain, unknown thing. It makes no difference how many known factors you may have to go into it, it may still prove very unprofitable.

So with that outlet there available to you, you at least (914)
have some protection.

If I may, without any discussion of the other man's motion picture, cite the example of one of the finest motion

Y. Frank Freeman—By Defendant—Direct

pictures ever made in the industry, picture called Wilson, I assure you that that is a very, very unsuccessful picture from the standpoint of its commercial value but it is one of the finest pictures the industry has ever made.

Now the fact that that would have, through ownership, some chance of an outlet, to at least carry on, would encourage the man who was producing that picture to go forward with it, and that happens all the time in the production of pictures, and I definitely feel that the interest of the producer and the distributor and the exhibitor can successfully be tied up in the ownership of the outlet for the product.

Q. You believe that Paramount has used its theatre interests to monopolize exhibition in the United States?

Mr. Wright: Same objection.

Mr. Seymour: Mr. Wright has an objection and my witness has hesitated to answer. Your Honor overruled the objection before.

Judge Hand: You may answer that, if you want to.

Q. (Continuing) You may answer.

Judge Hand: It is a general thing.

A. No, I don't think that Paramount has tried to monopolize.

Mr. Seymour: Now, Mr. Wright, I am prepared to stipulate with you that, if put to this witness, the questions negating the conspiracy charge in the complaint, which I have put to Mr. Zukor, would be answered by him in the negative, and on the basis of that stipulation I will not put the question to him.

Mr. Wright: That is stipulated.

Mr. Seymour: And you may now inquire.

The Court: We will now adjourn until tomorrow morning at ten-thirty.

(Adjourned until Wednesday, October 24, 1945.
at 10:30 a. m.)

Colloquy

(916)

New York, October 24, 1945, 10:30 a.m.

Trial resumed.

Judge Hand: Proceed.

Mr. Wright: If the Court please, I think there is a correction that should be made at page 819 of yesterday's typewritten transcript on the cross-examination of Mr. Rodgers. You will note the question at page 819 in the middle of the page reads:

"Q. You did not offer it then until after you had been able to agree with Balaban & Katz on terms for the picture, isn't that right?" I think the question should be "until after you had been *unable* to agree."

And then the next question reads:

"Q. The only reason that it was made available to the Wood's and the Oriental?"—it should include the words "That was the only reason that it was made available to the Wood's and the Oriental."

Mr. Gillespie: It seems reasonable to me.

The Court: How should the first correction read?

Mr. Wright: The question as it now reads is:

"Q. You did not offer it then until after you had been able to agree with Balaban & Katz on terms for

(917)

the picture," and it should read, "unable to agree,"

Judge Goddard: "unable" instead of "able"?

Mr. Wright: Yes.

Mr. Caskey: I might say, if your Honors please, that we have been from time to time suggesting corrections to the record to the stenographers, mostly of a grammatical nature, and at some convenient time we shall consult with the Government on those and have them made in the copies which your Honors are receiving.

Y. Frank Freeman—By Defendant—Cross

Judge Hand: All right.

Mr. Caskey: They are not of sufficient importance to call to your attention specifically.

Mr. Wright: All right.

Y. FRANK FREEMAN, resumed the stand.

Mr. Wright: Have you gentlemen any other questions of Mr. Freeman?

Mr. Gillespie: I don't think so.

Judge Hand: All right, Mr. Wright.

Cross Examination by Mr. Wright:

Q. Mr. Freeman, can you tell us just what a producer of motion pictures is, as you have been using the term? A. A producer of motion pictures, as we use the term in Hollywood, is the man who supervises the development of the (918)

story, the selection of the story from which the picture is to be made; also supervises the selection of the cast, and the designing of the sets, the costumes for the people, and as a supervisor of the complete production of the picture.

Q. In other words, the actual producer in every instance, I suppose, is an individual? A. Yes, sir.

Q. And the Paramount Pictures Company has under contract to it a substantial number of people that are called producers, executive producers, or associate producers? A. Yes.

Q. Titles of that kind? A. Yes.

Q. And those people have contractual arrangements with you; some are on a straight salary and others on a salary and percentage of profits of the pictures that they produce?

A. All of the producers that work for Paramount are on a straight salary, not participating.

Y. Frank Freeman—By Defendant—Cross

(919)

Q. Then there are some producers who produce on the Paramount lot, that is, you make your production facilities available to, where you finance the production and share in the proceeds? A. There is one such producer on the Paramount lot, in which we finance the production. There are other producers in the same category, but we don't finance.

Q. I was just wondering where you draw the line here as to what you call an independent producer. This producer on the Paramount lot, whose productions you finance, that is Mr. DeSylva? A. No, we don't finance Mr. DeSylva Mr. DeMille.

Q. Mr. DeMille? A. Yes.

Q. Mr. DeSylva was one of your salaried producers until quite recently? A. He was the executive producer until about a year ago—the first of this year.

Q. And I think he was one of those that you referred to as an independent, that is, according to your definition he became an independent when he set up his own unit although he continued to release through you? A. I consider Mr. DeSylva an independent producer.

Q. And you consider him independent because you say you don't finance his productions although you make production facilities available to him, is that right? A. Yes.

Q. And you don't share in the profits of the production? A. We do.

(920)

Q. You have a percentage of the production profits, as well as such profits as you make through distributing the picture? A. We have a distributing arrangement for the picture and then a share of the profits after all costs have been paid out of production.

Q. Are there any other of these producers you have referred to as independent which release pictures through you under a similar arrangement? A. Mr. Wallis—Hal Wallis

Y. Frank Freeman—By Defendant—Redirect

sections of the country who are not connected by any over-all organization; and the manufacturer of a picture will sell (931)

outright the rights to distribute his pictures, say in Georgia or North Carolina, to an individual distributor in that section. He will also sell the rights to distribute, say any in Texas, Oklahoma and Arkansas to another State's rights distributor, who distributes pictures in that territory. They are not connected through any central organization; they are all individuals who operate on their own in that particular territory.

By Judge Hand:

Q. Do they still exist? I thought they did get into an organization, according to some of your testimony. I may have misunderstood it. A. No, there are a great many State's rights exhibitors today handling pictures, buying reissues from people, new issues that are made, principally the cheaper budgeted pictures, Westerns and what we call action type pictures that are sold to those State's rights distributors. I would think that there are from one to three of those State's rights exhibitors in each territory.

By Mr. Seymour:

Q. Do you mean distributors? I think you said exhibitors, Mr. Freeman.

Judge Bright: He said exhibitors once or twice. He meant distributors.

The Witness: I am sorry. I meant distributors (932)

in the different divisions of territory.

By Judge Hand:

Q. The division of territory you refer to is what, a State or a subdivision? A. It is an exchange center; it is a ter-

Y. Frank Freeman—By Defendant—Redirect

ritory that is generally covered out of a central exchange, and that is pretty well defined in the national set-up.

By Judge Bright:

Q. They are not connected with any of these defendants or any of the national distributors? A. They are not connected with any of these defendants or any of the national distributors.

By Mr. Seymour:

Q. It is another method of distribution? A. Yes.

Q. And are some of the national distribution organizations the outgrowth of original State's rights distribution? A. I think the P. R. C., Monogram and I think Republic is an outgrowth.

By Judge Hand:

Q. That is what I thought you said yesterday, didn't you? A. I did not, no.

Mr. Seymour: What he was talking about yesterday, Judge Hand, was First National—

Judge Hand: Who did say that? Didn't some witness say that?

(933)

Mr. Seymour: I understood yesterday that the testimony dealt with the Associated First National, which was an organization of original State's rights distributors in the First National organization. Now that was not the end of States' rights development.

Judge Hand: I see.

Mr. Seymour: And that has been going on constantly, is still in effect, and there is nothing in the world to prevent its growth.

Y. Frank Freeman—By Defendant—Recross

Mr. Caskey: I have one matter that I cannot believe is really in dispute, but because it is incorporated in Appendix A of the trial brief at page 35, I should like to ask a question.

Recross Examination by Mr. Caskey:

(936)

Q. It appears, Mr. Freeman, that Paramount maintains an exchange in Atlanta, Georgia. Is that the natural distribution center of that portion of the United States? A. Yes.

Q. And is the same true as to Charlotte, North Carolina? A. Yes.

Q. And New Orleans? A. Yes.

Q. Dallas? A. Yes.

Q. Oklahoma City? A. Yes.

Q. And those exchanges were maintained in those distribution centers since your connection with the motion picture industry? A. I think possibly Charlotte was opened as an exchange center after my connection, and possibly Oklahoma City; I am not sure. They have been maintained for a long period of time.

Q. They are the natural distribution centers of the country? A. In that particular section of the country in which they are located, yes.

Q. And that would be equally true of Post Toasties? A. Of what?

Q. Of any commodity that is sold generally through the United States? A. Yes.

Mr. Caskey: That is all.

Mr. Seymour: Thank you, Mr. Freeman.

(937)

Mr. Seymour: I will call Mr. Reagan.

Charles M. Reagan—By Defendant—Direct

CHARLES M. REAGAN, called as a witness on behalf of the defendant Paramount, being duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. What is your present position with Paramount? A. Vice-president in charge of sales for the United States and Canada.

Q. And are you also a member of the board of directors? A. Yes, sir, I am.

Q. And how long have you been vice-president in charge of sales? A. Since May of 1944.

Q. What are your duties in that office? A. I am responsible for the distribution and merchandising of Paramount Pictures throughout the United States and Canada.

Q. And are you also a vice-president of Paramount Film Distributing Corporation? A. Yes, sir.

Q. And does Paramount Pictures, Inc. and Paramount Film Distributing Corporation distribute pictures? A. They do.

Q. And one operates in some States and the other operates in other States, is that right? A. That is correct.

Q. So they are both engaged in distribution in the same way but in different parts of the country, is that right? A. Yes, sir.

(938)

Q. And your testimony will apply to the distribution by both companies? A. Yes, sir.

Q. Now, when did you first enter the motion picture business? Will you tell us briefly about your experience in the business down to the time you became vice-president in charge of sales? A. I entered the motion picture business in 1920 as a salesman in the Cincinnati exchange for Paramount; in 1921 I was made sales manager of that exchange. In 1922 I was sent to Minneapolis as branch manager of

Y. Frank Freeman—By Defendant—Cross

—releases through Paramount but not under exactly the same terms as the DeSylva arrangement.

Q. Of these 40 producers out there that you referred to as independent, how many of those 40 release their pictures through one or more of the defendants here, do you know?

A. One or more of the defendants?

Q. Yes, the defendant distributors in the suit here. A. I would suppose about 12 or 14 of them. Just as a rough estimate. I haven't checked that.

Q. Do you know? A. Well, I can name those that I know.

Q. Which are those? A. Selznick, International Pictures, Preston Sturgis, Hunt von Stromberg, Lester Cowan, Eddie Golden, Edward Small, Charlie Rogers—did I name von Stromberg?

Q. Yes. A. Ben Borgeaus Productions. That is off-hand.

Judge Bright: What did you say they did?

The Witness: They released through the different

(921)

corporations in this case. That was the question asked me.

Q. Yes. This comparison you made between the 40 that are there now, that you say is substantially larger than the number there were when you went out there in 1938, as a matter of fact, of those 40 the only three which have any distribution facilities of their own—national distribution facilities—are Republic, Monogram and P. R. C., isn't that right? A. They are not defendants in this suit?

Q. I say, of these 40 producers that you named as independent, there are only three of those, that is, Monogram, Republic and P. R. C., which have any national distribution facilities of their own? A. I didn't name Republic, Monogram or P. R. C. I didn't mention those.

Y. Frank Freeman—By Defendant—Cross

Q. I thought you had referred to them as independent producers in discussing this loaning and borrowing of talent.
 A. My understanding of the question was, those companies that were not defendant to this suit. Republic, as I understand it, is not a defendant, and they were considered in the independent group. I did not name them in that—

Mr. Wright: Will you read the last question?

(Question read.)

A. In so far as I know, those that I named haven't any national distribution arrangement of their own. They distribute through other distributors.

(922)

Judge Bright: Except the three mentioned?

The Witness: Except those three mentioned.

Judge Bright: Do I understand you to say that the other 37 distribute through some one or more of these defendants?

The Witness: Yes, one or more of these defendants or through the group that were excepted, Republic, Monogram or P. R. C.

Q. You don't know which ones distribute through which, other than those you named? A. I can give you, from my memory, the best information I have. Selznick distributes through—

Q. Yes, I say, other than those you covered in your statement. A. That is right.

Q. In any event, all of these producers of pictures out there, whether they are under contract to you or whether they free-lance, or whatever the arrangement they make for distribution, have a very vital interest in the way that their films are distributed and exhibited, isn't that right? A. I suppose they do.

Y. Frank Freeman—By Defendant—Cross

Q. And the manner in which the films which these producers make are distributed and exhibited determines, in very large measure, does it not, the financial success of his pictures? A. I would answer that by saying that that contributes to it, and also the value of the product that he has (923)

made, whether it has box office value or not.

Q. Yes, but apart from the question of such intrinsic box office value as the picture might have because of its quality, its box office performance also depends in very large part on the kind of exploitation it gets in distribution and exhibition, isn't that, right? A. That certainly is a help to the success of the picture.

Q. That is, whether it gets into the key runs or not, and when it gets in, and how much playing time it gets in key runs, those are—— A. Those are contributing factors to the success of the picture.

Q. Now, the question as to what kind of exploitation any particular picture gets is largely a matter of agreement, then, between the distributor and the exhibitors who show the picture, isn't that right? A. No, that is not entirely correct. The kind of exploitation and the publicity campaign nationally is one that is arranged between the producer of the picture and the distributor of the picture. The local campaign, where the picture is exhibited in any community, is of course one that is worked out between the distributor and the exhibitor.

Q. When you make a contract with a producer to distribute his pictures, you just make a contract to distribute them and that is as far as the contract with him goes, isn't that right? A. Oh, no.

(924)

Q. That is, you don't—— A. No, he imposes all kinds of—I am speaking now of the contract that we have for distribution.

Y. Frank Freeman—By Defendant—Cross

Q. Yes. A. And from information of others. (Continuing) All kinds of conditions for the method and manner in which his picture will be sold, the terms, the amount of money to be spent in exploitation, his right of sitting in on the advertising campaign and approving the class and type of advertising that shall be issued on the picture; and in many instances, actually approving the individual contract that is made with the exhibitor for the exhibition of his picture.

Q. Yes, I understand that, but I say, assuming he does have the power under your distribution contract to approve or disapprove the particular terms or licenses that you, as a distributor, make with the various exhibitors, it is never determined what kind of play-off the picture is ultimately going to have until after the license agreements are made between you as the distributor and the various exhibitors that show the picture, isn't that right? A. I don't make those contracts, Mr. Wright. I am not in the distributing end and I could not answer just the type of contract made between the distributor and the exhibitor.

Q. You were yourself in charge of the exhibition (925) field at one point? A. That was back in 1938. I did not make the contracts for the playing of the pictures in the theatre.

Q. In any event, there is a struggle which goes on in the course of releasing the picture between the distributor and exhibitors, on the distributor's part to secure a certain amount of playing time in certain theatres, and as to which differences of opinion arise between the distributor and the exhibitor, isn't that right? A. Yes.

Q. Those are ultimately resolved in the terms of the contracts that are made between the exhibitor and the distributor? A. Continuous struggle.

Q. And your situation is, of course, always that your producer feels that he ought to have extended playing time

Y. Frank Freeman—By Defendant—Cross

in all of your key runs and that the picture ought to be held in there as long as it is making any money at all, isn't that right? A. That is correct.

Q. And your exhibitor, of course, may have different ideas and wants to pull or take out the picture and put in something else that he thinks may make more money before the other picture has played as much time as the producer thinks it ought to? A. That is generally a conflict between the two. What all the reasons are—

Q. Yes, you have a constant struggle over this question of what kind of playing time, but that is whether they get (926)

the preferred days, the Sundays, Saturdays and the holidays, or whether it is played at some other time? A. It is always a point at issue.

Q. How those issues are resolved, of course, always has a very important effect on the box office results of the picture over-all, isn't that right? A. It has an effect on it. The problem is not as much of a problem in the case of important box office pictures because the holiday dates and all are covered generally by the arrangement of the runs. It becomes a problem in the towns farther down the line, where they play split week, and two or three days instead of a whole week.

Q. Roughly, the situation that you have today with your smaller number of features and your greatly extended playing times in the first-runs is simply that you have a glut of features in your first-run situations, key situations, and you have an acute shortage in your subsequent-runs, isn't that right? A. I am not entirely familiar with that. I am not handling distribution. I can't answer that, Mr. Wright. (927)

Q. You don't know what the facts are as to that, then, at all? A. I do not.

Q. But, in any event, the success or failure of any of these producers who make pictures depends ultimately on

Y. Frank Freeman—By Defendant—Cross

the consistency with which he can get in box office returns, the cost and the profit on the picture, isn't that right? A. I think the success or failure is dependent on his ability to create a box office picture, to build something that the public is interested in, and will pay to go to see.

Q. And in that connection the pictures that have the greatest appeal or that you are interested in marketing are those which have a nation-wide box office appeal for all ages and levels of education and experience, isn't that right? A. I should think that is correct, yes.

Q. In other words, you don't waste any time discussing terms with some producer who is simply seeking to reach a limited portion of the market, who might wish to make a picture that appealed, let us say, to a certain section of the country? A. I do not quite understand your question about wasting time. We would discuss with any producer the distribution of his picture, if it had what we considered material in it or box office value, public appeal. I would not know how to distinguish between wasting time with one or another.

Q. Well, of course you understand that there are and may be wide differences in the box office appeal of any particular picture in various geographical areas and various age levels, and perhaps in various educational levels? A. There is a wide difference of appeal, yes.

Q. And as I say, you do not offer distribution facilities except to such pictures as you believe have the broadest possible appeal, isn't that right? A. It would be, certainly, the first consideration to make the test, because the distributing company is interested in making money and distributing pictures from which they can get the broadest distribution and make a financial gain, make a profit out of it. That is their purpose and that is their job.

Q. And your distribution and marketing system is so set up, however, that you do not afford the facilities to some-

Q. And your distribution and marketing system is so set up, however, that you do not afford the facilities to some-

Y. Frank Freeman—By Defendant—Cross.

body who may want to reach a particular segment of that whole domestic market?

Mr. Proskauer: I object to that, your Honor. It is speculative.

Judge Hand: I think we shall sustain that objection. I do not see that it has any pertinence. Why in the world should this company be regarded as a humanitarian trying to exploit pictures that only appeal to a small class and are not much profitable. It is merely absurd, unless you can show that there is a conspiracy to exclude those people. There is no such law in the world.

(929)

Mr. Wright: If the Court please, I think it is quite apparent that one of the purposes of the Act, one of the purposes of competition, is to assure an opportunity for doing business in divers ways, and the opportunity for divergent methods of expression.

Judge Hand: We will sustain this objection. Go on with your next question.

Q. You say all of these films, of course, are copyrighted?

A. I said that?

Mr. Caskey: What was that?

Mr. Seymour: We could not hear your question.

Q. I say everything you make is copyrighted, isn't that correct, all films? A. All films that Paramount makes are copyrighted. I suppose the others are.

Mr. Proskauer: May we have a stipulation as to something we have all tacitly assumed, that substantially all, or, in fact, all the films and motion pictures are copyrighted? I suppose we can agree on that, Mr. Wright?

Y. Frank Freeman—By Defendant—Redirect

Mr. Wright: Yes. I merely wanted to point out the copyright issues as a matter of course.

Q. It is, is it not, as far as you know? A. It is in the conduct of Paramount business.

Q. You referred, I think, in your direct examination to each film representing some new formula. Now, so far as copyright is concerned, you get a copyright whether you (930)

use the same formula seven times or whether there is any particular freshness or originality or anything else in it or not; isn't that right?

Mr. Proskauer: I object to that as irrelevant.

Mr. Caskey: I object to it.

Judge Hand: Yes. I do not see any use in putting things like that in the record.

Mr. Wright: That is all.

Redirect Examination by Mr. Seymour:

Q. Just one question: Do some of the independent producers that you mentioned distribute through Republic, Monogram and P. R. C.? A. Yes. Wait a minute. You say the ones that I mentioned?

Q. In the group of 35 or 40 which you did not name but which you gave the number of yesterday— A. They do.

Q. Do a number of those distribute through Republic, Monogram and P. R. C., which are not defendants in this suit? A. Yes.

Q. Do others distribute through so-called State's rights distributors? A. A few, yes.

By Judge Bright:

Q. What are State's rights distributors? A. State's rights are defined as individual distributors in the various

Y. Frank Freeman—By Defendant—Redirect

Judge Hand: I apparently misunderstood.

Mr. Seymour: It was not the end of that method. It is here, and there is nothing to stop its growing to any extent, or any kind of distribution growing to any extent.

Any other questions of Mr. Freeman?

By Judge Bright:

Q. Do these State's rights distributors distribute any of the product of the defendant producers? **A.** No, not unless there had been some deal to sell some of them an old picture that they reissued.

May I say that we recently sold to a man by the name of Harry Sherman, who is an independent producer—

Mr. Proskauer: A distributor?

The Witness: An independent producer.

A. (Continuing) —a series of Western pictures that had (1934)

previously been produced by him for our company. They had been played in all of the theatres available throughout the country, and we sold him back all of our rights, copyrights and everything in those pictures. Now he expects, as I understand it, to sell those pictures to these State's rights distributors. In other words, he paid so much in a lump sum for the whole; he expects to take each individual picture and sell to the State's rights distributor in Atlanta, Georgia, that territory, for X dollars; he expects to sell to the State's rights distributors in New England, that territory, for X dollars; in Chicago, that territory for X dollars, and of course, out of it all, to make a profit for himself. He has nothing then to do with the distribution or handling of it in any way. He has passed his rights to that picture in that given territory to these State's rights distributors.

Y. Frank Freeman—By Defendant—Redirect

Q. Are any of the pictures produced by Paramount that still are owned by Paramount, distributed through State's rights distributors? A. No.

Mr. Seymour: Are there any further questions of Mr. Freeman?

The Witness: May I qualify my last answer and ask, would that mean pictures that have been reduced to 16 millimeter size and have been licensed to independent distributors? Paramount does license pictures in 16 millimeters to a separate distributor who

(935).

handles such products in schools and churches and clubs and other places, not in theatres, however.

Q. What do you mean by a separate distributor? A. Not connected with Paramount in any way.

By Mr. Proskauer:

Q. Or with any of the other defendants? A. Or with any of the other defendants. It is strictly an independent distributor, but he can only distribute the pictures in 16 millimeter size.

By Judge Bright:

Q. What are they, original features reduced from 35 to 16 millimeter? A. Yes, pictures that have already been released in 35 millimeter size through the theatres, and they have played through most of the theatres in the country; and then he has the license arrangements to distribute those pictures in the United States, as I say, in certain localities where there are not theatres, in churches and clubs, and places of that kind.

Mr. Seymour: Anything else?

Charles M. Reagan—By Defendant—Direct

that exchange. In about 1926 I was made district manager with supervision of the Cincinnati, Indianapolis and Louisville exchanges; and in 1932 I was made district manager with supervision of the Chicago, Milwaukee, Detroit and Indianapolis exchanges.

In 1934 I came to New York as division sales manager. That position I held until 1941 when I was made assistant general sales manager and continued in that capacity until May of 1944 when I got my present assignment.

Q. And in 1944 you succeeded Mr. Neil Agnew who had resigned? A. Yes, sir, I did.

Q. And who is no longer connected with Paramount?

A. No, sir, he is not.

Q. Now, will you tell us about the organization of the (939)

distribution or sales department of Paramount? A. The distribution organization is headed by myself as general sales manager. We have divided the country into what we call four divisions, which are supervised by four division sales managers; a further division of ten districts, each of which are supervised by a district manager. There are 31 branch exchanges, each of which are supervised by a branch manager. Those exchanges vary in size; and the number of salesmen employed in each exchange varies from about two to about seven.

Then in each exchange we have a booking department that books the pictures to the exhibitors with whom we do business.

We have an accounting department which arranges for the collection of the film rental that we earn.

We have a shipping department which ships the pictures to the theatres with whom we do business; and we have an inspection department which inspects the films after each engagement has been completed. If the films are found not to be in first class condition, they are put in first class con-

Charles M. Reagan—By Defendant—Direct.

dition before they go out for another engagement, so that the print is at all times in a first class condition before it has another exhibition or another engagement.

Q. Did you tell us how many exchanges there were (940)

altogether? A. Yes, sir, I told you there were 31.

Q. Now, do those 31 exchanges handle only Paramount release pictures? A. Yes, sir, they do.

Q. Do they have any relationship or connection with the exchanges maintained by other distributors? A. No, sir, they do not.

Q. Does Paramount distribute the pictures of any other defendant in this case? A. No, sir. We have a shipping station in Butte, Montana, which is not an exchange. There we handle the physical shipment of pictures for United Artists.

Q. That is just at Butte, Montana, as a matter of shipping? A. Yes, sir.

Q. That is the only place in the United States where you handle the pictures of any other defendant, and that is just a matter of the shipment? A. Yes, sir.

Q. And there are no salesmen employed in connection with the Butte, Montana, shipping station? A. There are none. It is just a shipping station.

Q. Now, was there a time when Paramount had more than 31 exchanges? A. Yes, sir. At one time I believe we had 36 or 37 exchanges.

Q. And why was the number reduced? A. The number was reduced because we felt that we could adequately sell and service the accounts with whom we did business with a (941)

lesser number of exchanges.

Q. Now, have the existing exchanges been maintained for a long period of time in the same cities where they are now located? A. Yes, sir.

Charles M. Reagan—By Defendant—Direct

Q. And can you tell us the basis for selecting the city where a particular exchange is located? A. Well, those cities were selected because they were, we believe, the best locations from which to adequately sell and service our accounts.

Q. Now, your paramount consideration is both to send salesmen out to get in touch with the theatres and handle the films back and forth, is that right? A. Yes.

Q. And it is the combination of those two considerations in a central place which dictated the selection of the city for the exchange? A. Yes, sir.

Q. Approximately how many theatres does Paramount license pictures to? A. Well, it varies, dependent upon the box office quality of the picture. I should say from about 8000 to 14,000 or 14,500.

Judge Bright: What was that question?

(Question and answer read.)

Q. Approximately how many accounts are served by each exchange? A. Well, they vary in number, depending upon the size of the exchange. Our smallest exchange serves approximately (942)

approximately 150 accounts, and our largest in excess of 700.

Q. Now, I wish you would tell us the physical method by which films are handled through a typical exchange, beginning with the assignment of prints. A. The number of prints that are assigned to an exchange is dependent upon, both the quality of the picture and the number of accounts in that exchange. Do you mean—

Q. Well, I would like to have you trace the method, the physical method of exchange operation, beginning with the assignment of prints and how they are handled in the exchange, in shipment to the customer, return to the exchange, inspection and so on, so we can have a better idea of how it is done. A. The number of prints, as I said, varies de-

Charles M. Reagan—By Defendant—Direct

pending on the quality of the picture and the number of accounts in the exchange. After a picture is licensed to a customer, it is then booked to the theatre in which it is to play. After the booking has been made it is shipped—

Q. What does "booking" mean? A. The booking means the play date that the picture will play in the particular theatre.

Q. That is, the license does not fix the play date ordinarily? A. Not ordinarily.

Q. The play date is fixed by booking after the license is made? A. That is correct.

(942-A)

Q. The license merely provides that the exhibitor is to get the picture for exhibition on certain terms? A. Yes.

Q. And then the picture is booked by the booker for the particular play date by discussion with the exhibitor? A. Yes, sir, that is correct.

Q. Then the exhibitor indicates when he would like to play that picture, and it is booked on that basis? A. That is correct.

(943)

Q. And then the films are shipped from the exchange?

A. After the booking has been made, the picture is shipped to the theatre in which it is to play. After this engagement is completed, it is returned to the exchange where it is inspected in order to make certain that it will be in first class condition before it goes out to the next theatre in which it is to play.

For instance, it may be found that the print has been damaged. If that occurs, the damage is corrected as a result of the inspection; the damaged part is replaced and the print is brought up to first-class condition so that it will be ready for its next engagement.

Q. Are the films inspected after every engagement? A. Yes.

Charles M. Reagan—By Defendant—Direct

Judge Goddard: Would you tell us what determines what picture a certain theatre will get and what determines which run they will get?

Mr. Seymour: I am coming to that, if your Honor please. I am going to develop that at length, if I may do it a little later on.

Judge Goddard: Yes, I will just withdraw the question.

Q. You have the film coming back for inspection. Is it immediately shipped out again? A. Well, during its early period (944)

of release, I should say for the first 12 or 14 months, it is pretty much in use either in the theatres or in the time it takes to be shipped to and from the theatres.

Q. So that throughout the period of greatest playing time for the picture, the picture is either playing in engagement or in transit or under inspection? A. Yes, sir.

Q. Almost continuously? A. Yes, that is right.

Q. Is it quite a problem to see that the limited number of films get around to all the theatres when they are supposed to get there? A. Yes, sir, it is.

Q. How do you ship them to the theatres and how are they returned? A. We ship principally either by parcel post or by express or by film trucking companies.

Q. And is it necessary to use whatever method will get them there on time? A. We use the fastest method that we can, because the prints are in such great demand that we try and reduce to a minimum the shipping time to and from the theatre.

Q. Are they then returned in the same manner? A. Yes, same way.

Q. How many prints are made by Paramount of pictures which it produces and distributes? A. They vary in number, again depending upon what we believe to be the box office quality of the picture, from about 150 to 325.

Charles M. Reagan—By Defendant—Direct

Q. That is of each picture? A. Yes, sir, of each picture.
(945)

Q. Whatever the number of prints is, that particular picture has to serve from 8,000 to 14,000 theatres? A. That is correct.

Q. Approximately what is the cost of each of these prints, just the negative cost? A. You mean the positive print cost?

Q. Positive print; I beg your pardon. The cost of the positive print. A. The cost varies, depending upon the length of the picture, whether it is in black or white or whether it is in technicolor. I should say a black and white print costs on an average of about \$125 to \$150, and a technicolor picture from \$500 to about \$750, depending upon its length.

Q. Of course, that cost hasn't anything to do with the cost of production? A. Nothing at all.

Q. That is just the cost of the print? A. Cost of the positive prints.

Q. Why is the number of prints made so limited? A. Well, the number of prints that are made is limited for two reasons, or, rather, for several reasons. First, the cost of the prints, plus the cost of production, plus the cost of distribution, are an influencing factor in the profit that we make from that picture. Then also, the number of prints is limited because the film rental that we earn or that we receive in many theatres does not cover but only a small fraction of
(946)

the actual cost of the print itself. We could not afford to make a great number of prints, because the income—or greater number of prints than we do, because the income that we get from them, as I say, in many instances, is limited to just a fraction of the actual cost of the print itself in the particular engagement.

Q. Would you say a majority of all the theatres you serve pay, in film rental, very much less than the cost of a single print? A. Yes.

Charles M. Reagan—By Defendant—Direct

Judge Bright: How many theatres will one print serve?

The Witness: One print will serve from—

Judge Bright: I mean, how many engagements?

The Witness: I should say from about 45 to 60.

Q. Was there a time when a single print served even fewer engagements? A. Yes, there was such a time, but as a result of improved projection, as a result of the improvement in the stock of the prints themselves, the number of engagements that they serve has been increased over a period of years.

Q. What is the approximate life of a print? A. That depends on how much it is used, of course, but I should say on the average of about 18 months to two years.

Q. Will you tell us in a general way about the current (1947)

cost of production of Paramount pictures, that is, the production of an average picture, or even an average top picture? A. Well, production costs vary. We make pictures for as little as \$150,000 in negative, and we make them for as much as three and a half million dollars, negative.

Q. In recent times, at least, Paramount has been making more and more of the very expensive pictures? A. We have been, yes.

Q. Has the cost of production of pictures generally been rising? A. Pardon me?

Q. Has the cost of the production of pictures been going up? A. It has been, yes, sir.

Q. Is the cost of Paramount pictures today, cost of production, greater than it was even a few years ago? A. Much greater.

Q. Do you have any part in the planning of a production program? A. Yes, sir, I do.

Q. What part do you play? A. Well, when our program for a season is discussed, I sit in on those discussions with

Charles M. Reagan—By Defendant—Direct

Mr. Balaban, president of our company, the head of our production department, the head of our foreign department, and, as best I can, I give my ideas with respect to the number of pictures that I believe that our company should produce, also the type of pictures that I believe the market can best absorb, the casting of the pictures; I am often asked my (948)

opinion as to whether a story should be bought or a play should be bought; all the things that go to determine what type of program we should have.

Q. Why do you have contributions to make on those subjects? A. I am supposed to know something about what the public wants in the way of entertainment, what type of entertainment that is most acceptable to them.

Q. Why do you have something to do with suggestions about casting? A. Because that would be an influencing factor in the determination of pictures that would be most acceptable to the public.

Q. How do you learn about questions of casting in connection with your work? Do you learn about the appeal of particular stars? A. Well, of course, that is part of my job.

Q. Does a program have to be planned a long time ahead?

A. Yes, it is planned a year, a year and a half ahead, as nearly as we can plan that far in advance.

Q. And after program discussions, eventually a tentative program is worked out? A. Yes, sir.

Q. And then there are changes made from time to time for some of the reasons Mr. Freeman mentioned yesterday?

A. Yes, sir, that is correct.

Q. Are you consulted from time to time as to possible changes in the program? A. I am consulted almost every (949)

day, or at least several times a week.

Charles M. Reagan—By Defendant—Direct

Q. In connection with the distribution of Paramount pictures, are sales conventions held? A. We hold sales meetings, small sales meetings, two or three times a year.

Q. Has there been any change in the nature of the sales meetings of Paramount since the consent decree went into effect? A. Yes, sir, there has been.

Q. Will you tell us what the system was immediately before the consent decree went into effect and what the system is now? A. Prior to the consent decree, when we sold a year's group of pictures at one time, we usually held a big sales convention, what we called a national sales convention, and we had present at that convention our bookers, and our salesmen, and our branch and our district managers, and our division managers, and home office officials along with production officials, and that was a very important affair, because it was at that time that we attempted to enthruse them to sell the pictures that we had decided to produce for the next year to our own people, so that they in turn could go out and sell them to our customers, and we stressed that very greatly.

Q. You talk of selling to the customers, is that right?
A. I mean licensing.

Q. That is the license contract. And you use the word "sell" in the sense of persuading them to license? A. Yes.
(950)

Judge Bright: Were these sales meetings attended only by employees of Paramount, or were there outsiders there?

The Witness: Generally only by employees of Paramount.

Q. I think what Judge Bright wants to ask you is whether representatives of other distributors were present? A. Oh, no, sir. Only our own people.

Charles M. Reagan—By Defendant—Direct

Judge Bright: No exhibitors?

The Witness: Very seldom. Once in a while we would invite an important exhibitor or a few important exhibitors.

(951)

Q. These sales meetings, I suppose, occasionally had social aspects? A. Yes, we tried to entertain the boys and enthruse them all we could.

Q. Has there been a change in that system of conventions since the consent decree? A. Yes, there has been a change because we no longer sell an entire season's product at one time. We sell only a limited number of pictures, maximum of five at a time, and as a result, we have meetings two or three times a year, and we have smaller meetings, rather, regional meetings, where we can go out and discuss our problems more intimately than we used to do in the old days.

Q. Those regional meetings are still attended only by Paramount people, is that right? A. Yes, that's so.

Q. And you don't have any joint sales meetings with other distributors? A. No, sir, we do not.

Q. Whether they are defendants in this case or anybody else? A. We couldn't do that.

Q. You regard your distribution activities as— A. As pretty—not pretty much. It is our own affair.

Q. Prior to the consent decree, how was the date for the sales conventions determined? A. Well, as soon as we had our production program in shape so that we could discuss it with our sales department, we then set a date for our convention and we set that as early in the season as we could.

(952)

Q. Why was that? A. In order to enable us to beat our competitors, well, to the punch, I guess you would call it.

Q. Who are your competitors? A. All of the distributing companies who distribute pictures.

Charles M. Reagan—By Defendant—Direct

Q. Including the defendants in this case and others?

A. Yes.

Q. Did the date of the sales conventions tend to creep up earlier and earlier as a result of that? A. We tried to make it as early as we could and each year we tried to hold it earlier so we could get started before our competitors got started.

Q. What was the theory of that? How did it help to hold your convention earlier? A. The more sales we could make prior to those of our competitors, the better off we were, we had that much behind us.

Q. Was the selling or the licensing of the pictures started immediately after the convention? A. Generally, but it became so highly competitive that the time came when we even started to sell our year's product before we had our convention.

Judge Bright: Were your pictures in being at the time of these conventions?

The Witness: No, they were not. They were not (953)

completed. The plans were for the number of pictures that we would distribute and most—many of the titles were made, some pictures were cast and some were not, but we got to the point where, without even waiting for having our program complete, we would go out and start to sell our pictures and sell them to whoever we could based on the past experience they had had with Paramount pictures and the faith they had in the ability of the company to make good pictures.

Q. So that before the decree you would go out and try to license on the basis of a year's program? A. In most cases.

Charles M. Reagan—By Defendant—Direct

Q. Since then you have been licensing in not more than blocks of five, is that right? A. That is right.

Q. There has been a trade showing of the blocks which were being licensed in blocks of five? A. We trade-show them before we—

Q. You continue to follow the requirements of the decree, though its requirements are no longer effective? A. Yes, sir, that is true.

Q. Do your salesmen in the exchanges work on fixed salary only or do they receive any other compensation? A. No, they get salary plus their expenses and then our salesmen also participate in what we call an incentive plan. (954)

Q. Does that operate so that the better showing of the exchange, the more participation they have? A. Yes, sir, that is right.

Q. Does the showing of the exchange depend upon all the transactions in the exchange area? A. The better the result is that they have with Paramount pictures, the more incentive money they earn.

Q. Does that apply to license fees or rentals received from independent exhibitors and also from theatres in which any defendant has an interest? A. Yes, sir, from all the license fees that come into an exchange.

Q. Do you still have sales drives? A. Yes, sir, we have just completed one.

Q. What is a sales drive in your business? A. Well, a sales drive is a drive where we try and improve the business that we are doing.

Q. Do you have a Paramount sales drive or is there a joint sales drive by all the distributors? A. Oh, no, we have one of our own.

Q. Do the other distributors have drives of their own? A. Yes, sir.

Charles M. Reagan—By Defendant—Direct

Q. What type of improvements do you seek to work in your business by these sales drives? A. We try to improve our film rentals as a result of the sales drives. The more pictures we can license, the more playing time that we can (955)

secure for our pictures, the better the result is for us and the more detrimental to our competitor.

Q. What is the effect of a successful sales drive, does it tend to take business away from your competitors? A. Yes, the more playing time that we can get during that period from a theatre, the less is available to our competitor.

Q. By "competitors" you refer to all the distributors? A. All the distributors.

Q. Does your department have anything to do with the advertising and exploitation of Paramount pictures? A. Yes, sir, we do.

Q. What does your department have to do with that? A. Well, the advertising and exploitation department is under my supervision.

Q. Does Paramount do any advertising itself of Paramount pictures? A. We do.

Q. Will you tell us how and why Paramount does the advertising? A. We do it because we try to establish the picture. We try to create a desire on the part of both the public and the exhibitor for our pictures and to stimulate the desire on the part of everybody to want to see the picture.

Q. What form of advertising does Paramount use? A. Well, we advertise in magazines, we advertise by way of (956)

radio, we advertise by way of billboards, we advertise in the trade papers.

Q. Much of that advertising is quite unrelated to the showing of a picture in any theatre? A. It is what we call a national campaign, prior to the time that the picture goes into release.

Charles M. Reagan—By Defendant—Direct

Q. And following such advertising of the salesmen of the Paramount exchanges engaged in procuring licenses for the pictures so advertised? A. Yes, sir.

Q. And following the advertising, the pictures are exhibited, is that right? A. That is correct.

Q. Do the other distributors also advertise? A. They do.

Q. Is there any joint advertising by the distributors about all their pictures? A. No, sir, there is not.

Q. Can you tell us approximately how much Paramount spends in the type of advertising that you have referred to annually? A. This year we will spend about three million dollars.

Q. Do you have anything to do with the advertising done by exhibitors of Paramount pictures? A. Yes, sir.

Q. And what do you have to do with that? A. Well, we have what we call cooperative newspaper advertising campaigns.

Q. Will you explain that? A. I mean by that—perhaps I can best illustrate it this way: A theatre has an advertising budget of, let us say, a thousand dollars a week, which they normally spend on advertising a picture. We will go to that theatre and say, "We would like you to spend an additional thousand dollars over and above what you normally spend. If you will do that, we will share part of the cost of that additional expenditure." That is usually made in the form of newspaper advertising and that is what we call cooperative advertising.

Q. And the result of that is more extensive publicity for Paramount pictures? A. Surely.

Q. Is that system of cooperative advertising confined to first-run exhibitions? A. No, sir, it is not confined to first-runs. We do that with all types of theatres.

Q. Is cooperative advertising arranged only with theatres in which Paramount or some other defendant in this case

Charles M. Reagan—By Defendant—Direct

has an interest? A. No, sir, it is arranged with not only the theatres in which the defendants and this company have an interest but independent theatres as well.

Q. Worked out with Paramount customers indiscriminately, is that right? A. Yes, sir.

Q. I guess you have given us an example of how that works. Why does Paramount engage in cooperative advertising? A. Because we hope to help establish the picture throughout the United States and create a desire on the part of the public to want to see it.

(958)

Q. Does it have any effect on the gross of the particular theatre in which the advertising is done? A. It not only helps the gross in the theatre in which the campaign is used but it also helps to establish the picture in the surrounding territory.

Q. Do the subsequent exhibitors benefit from that advertising? A. Oh, yes, of course they do.

Q. And does Paramount benefit from the advertising? A. Yes, sir.

Q. How are the amounts contributed by Paramount to the cooperative advertising determined? A. They are determined by negotiation between our sales representative and the exhibitor.

Q. Aside from the cooperative advertising, is it customary for first-run exhibitors to spend substantial sums on advertising? A. Yes, sir, they do.

Q. Do they usually spend somewhat more on advertising than subsequent-run exhibitors? A. Oh, yes, they spend much more. For instance, we play a picture in—well, I will use as an illustration the Rivoli, and they spend \$35,000 or \$40,000 in advertising before the picture even opens, and then ten, twelve, fifteen, eighteen thousand dollars a week during its engagement. There isn't any subsequent-run exhibitor that spends that much money.

Charles M. Reagan—By Defendant—Direct

Q. Do you consider that the advertising of the first-run, (959)

whether cooperative or not, benefits the subsequent runs? A. It does if it is a good picture, they get the benefit of the word-of-mouth advertising as a result of it.

Q. What is the effect on the business of the theatres showing Paramount pictures of the advertising done by those theatres? A. It improves our film rental.

Q. Does it tend to draw patrons from other theatres to the Paramount theatres to see those pictures? A. Yes, sir—we hope so. Spend a lot of money on it.

Q. Do you do advertising for the Paramount pictures and do the exhibitors do advertising on precisely the same basis, whether there is a first-run competitor affiliated with one of the defendants in this case or not? A. Will you repeat that question?

Q. In a community where there is a theatre operated on a first-run policy, in which one of the other defendants in this case has an interest, does the theatre in which the Paramount pictures are shown advertise extensively? A. Yes, sir.

Q. Is there any diminution of the advertising expenditures where there is competition from a theatre in which one of the other defendants in this case has an interest? A. There is not.

Q. I would like you to tell us the functions of the (960)

various members of the distribution department, beginning with the salesman, in connection with the licensing of Paramount pictures. A. Well, the salesman is responsible for the licensing of our pictures generally with the smaller accounts in the exchange territory in which he is employed, he calls on those accounts, endeavors to make contracts or, rather, applications for contracts. After he does, the contracts or the applications are submitted to the branch man-

Charles M. Reagan—By Defendant—Direct

ager for his consideration. If they meet with his approval, they are then sent to the district manager for his consideration, and so on up the line until they get to the division sales manager, at which time he either approves or rejects them, depending upon whether they meet—

Q. And they may be disapproved at some stage along the line where the higher officer determines that the proposed terms are not satisfactory? A. They may be disapproved by the branch manager, the district manager or the division manager.

Q. Generally speaking, do these applications for licenses, or these proposed contractual terms, come to you for approval? A. Not generally, no, sir, unless—

Judge Bright: Is there a regular form of application for license signed by the exhibitor?

The Witness: Yes, sir.

(961)

Judge Bright: In that form does he state the preference he has, what he wishes, when he wishes to show the picture or what he wishes to pay for it?

The Witness: He states what he is willing to pay for it, yes, sir.

Judge Bright: Does he state whether he would like any particular run or any particular clearance or any particular show date?

The Witness: The play date is not stated, generally, in the contract.

Judge Bright: I am talking about the application.

The Witness: Well, I call it an application. Perhaps that is confusing to you. We call it an application for contract until it has been approved, but that is really the same as a contract.

Judge Bright: It is made on the form that is ultimately approved as the license form?

The Witness: Yes, sir.

Charles M. Reagan—By Defendant—Direct

Judge Bright: There is no separate paper—

The Witness: No, sir, there is not.

Judge Bright: —called an application?

The Witness: No, sir, it is the same.

Judge Bright: And on that he lists the pictures that he would like to show?

(962) The Witness: The pictures that we license, the titles are listed, and the terms that he agrees to pay are also listed.

Judge Bright: He can choose some of those pictures but he does not have to choose all of the five?

The Witness: We try, usually, to sell all the five. Sometimes we sell less than that.

Q. I show you, Mr. Reagan, this white form which has at the bottom "Exhibitor's Copy", Form 4B40A5, and ask you whether that is the form of contract or license agreement now in use by Paramount? A. Yes, sir, it is.

Q. What you described as the application is a blue copy of that same form, having merely the red legend "Exhibitor's Copy of Application for Contract" printed across its face? A. That is correct.

Q. In all other respects it is the same, is that right? A. Yes, sir.

Mr. Seymour: Just so the record will be clear, I am going to offer the white copy as Paramount's Exhibit 1 and furnish a copy to Mr. Wright and I will hand up to the Court copies which are identical except for a difference in color and the fact that in the lower lefthand corner they are for a different part of the business, but in other respects they are identical.

(Marked Defendant Paramount's Exhibit P-1.)

Charles M. Reagan—By Defendant—Direct

Q. After the license contract has been approved by the (963)

member of the Paramount distributing organization who finally approves that contract, what is done with the exhibitor? A. He is notified of the approval.

Q. And he receives back, does he, a copy of the license agreement? A. Yes. That is how he is notified, with a copy of the agreement that he signed.

Q. Do the branch managers, district managers, division managers and general sales managers occasionally conduct negotiations in the licensing of a Paramount product? A. Not occasionally, but often.

Q. I beg your pardon? A. Not occasionally, but often.

Q. Can you tell us why some accounts are negotiated with by persons other than salesmen in the distributing organization? A. Well, a salesman may negotiate with an account and not be able to make a satisfactory deal and, in that event, the branch manager may try and make the kind of deal he believes we are entitled to, or a district manager may do that, or the division manager may do that. Then there are some accounts that it is the responsibility of the branch manager to license our pictures to. Other than that, it is the responsibility of the district manager or the division manager, as the case may be.

Q. Generally speaking, unless the reason for the negotiation is some breakdown by somebody down the line in (964)

negotiations, the particular member of the distributing organization who is to do the negotiating is determined by the importance of the account, isn't that so? A. That is true.

Q. Is the importance of the account in any way affected by the question of whether the account represents theatres in which another distributor has an interest? A. No, sir, it is not. Determined by the value of film rental that we receive from each account.

Charles M. Reagan—By Defendant—Direct

Q. Who negotiates for the licensing of Paramount product in theatres in which the defendant Loew has an interest?

A. Mr. Hugh Owen, one of our division sales managers, and myself.

Q. With whom are those negotiations conducted? A. Well, for the theatres that Loew operates outside of the City of New York, Mr. Owen negotiates with Mr. Joseph Vogel; and for the theatres that Loew operates in the City of New York, Mr. Owen and myself negotiate with Mr. Charles Moscovitz.

Q. In that connection do you have any negotiations with Mr. Rodgers, who was here as a witness? A. No, no. He is a distributor.

Q. Do you have anything at all to do with him in connection with negotiations? A. No, sir, do not.

Q. At the time of the negotiations with Loew for the (965)

licensing of Paramount pictures to the theatres in which Loew has an interest, do you obtain any information as to the negotiations or arrangements which Loew has made or may be making with theatres in which Paramount has an interest for the exhibition of Metro pictures in those theatres? A. No, sir, I do not.

Q. I will develop that further. Is there any relationship at all between your negotiations or that of your colleagues with Loew for the licensing of Paramount pictures in Loew theatres and the negotiations or arrangements which have been made or are being made for the licensing of Metro pictures in theatres in which Paramount has an interest in both? A. No.

Mr. Wright: We have the same objection we made heretofore to that sort of testimony as calling for his conclusion, a conclusion which the Court should draw.

Judge Hand: Overruled.

Charles M. Reagan—By Defendant—Direct

Q. Who negotiates for the licensing—

Judge Bright: Did he answer the question?

The Witness: No, sir, I started to answer.

Q. Let us be sure. What is your answer? **A.** No, we don't. I am not interested, Mr. Seymour, in what Loew does with their pictures in Paramount theatres. My interest is in distributing Paramount pictures to the best advantage possible so that we can get the maximum return for those (1966)

pictures. That is my only interest.

Q. I shall come back to that subject. Who negotiates for the licensing of Paramount pictures in theatres in which the defendant Fox has an interest, Twentieth Century-Fox?

A. Mr. George Smith, another one of our division sales managers.

Q. Do you know where he conducts those negotiations and with whom? **A.** He conducts them with the heads of the various Fox companies in the cities in which they have their headquarters.

Q. Do you know whether or not when those negotiations are conducted the Paramount representative has any knowledge or information as to negotiations or arrangements for the exhibition of Twentieth Century-Fox pictures in theatres in which Paramount has an interest? **A.** He has no information. He is not interested.

Mr. Wright: If the Court please, I do not see how this witness can testify to what Mr. Smith's information was or what Mr. Smith was interested in.

Judge Hand: No, I do not see how he can either.

Mr. Seymour: He is in Mr. Reagan's department.

Q. Do you sometimes participate in those negotiations?
A. I do, occasionally.

Mr. Seymour: We can call all these witnesses, if we have to call them.

Charles M. Reagan—By Defendant—Direct

(967)

Judge Hand: Perhaps you can get a stipulation. I am afraid you will have to call them if you cannot, because I do not see how a statement of some supervisor as to what somebody knows or doesn't know is competent. It probably isn't competent and if it is competent, it has only the slightest weight.

Mr. Seymour: I won't press that question, in view of the objection.

Q. Mr. Reagan, when negotiations are conducted by Mr. Smith with representatives of Twentieth Century-Fox do you have any information as to negotiations or arrangements which are being made or which have been made for the exhibition of Twentieth Century-Fox films in theatres in which Paramount has an interest? A. I don't have any information, and I am not interested.

Q. So far as you know, does Mr. Smith have any such information? A. No, sir.

Q. Do the results of those negotiations come to you for final approval usually? A. Yes, sir.

Q. At the time of that approval do you have any knowledge or information as to the negotiations or arrangements for the showing of the Fox films in theatres in which Paramount has an interest? A. I don't have. I don't care, Mr. Seymour. All I am interested in is my own pictures and getting the best results we can for them. That is my only

(968)

interest.

Q. So far as you are concerned, is there any relationship between the arrangement with Fox for showing Paramount pictures and whatever arrangement there may be for the showing of Fox pictures in theatres in which Paramount has an interest? A. No, sir, I am not concerned with that.

Charles M. Reagan—By Defendant—Direct

Q. Who negotiates for the showing of Paramount pictures in theatres in which Warner has an interest? A. Mr. William Erb, another one of our division sales managers. (969)

Q. Do you know with whom he conducts the negotiations? A. Mr. Clayton Bond.

Q. And where are they conducted? A. Here in New York.

Q. And after negotiations are concluded do they come to you for final approval? A. Yes, sir.

Q. At the time of those negotiations and your final approval thereof, do you have any knowledge or information as to the negotiations or arrangements which may be under way or which may have been made for the exhibition of Warner pictures in which Paramount has an interest? A. I do not.

Q. So far as you are concerned, is there any relationship whatever— A. I don't care; I am not interested.

Q. (Continuing)—between the arrangements made between Paramount and Warner and the arrangements, if any, which Warner may have made with various theatre-operating companies in which Paramount has an interest? A. I have no interest in that.

Q. Now, who negotiates for the showing of Paramount pictures in theatres in which RKO has an interest? A. Mr. Hugh Owen.

Q. And with whom are those negotiations conducted? A. Mr. Harold Marish.

Q. And after they are completed are they generally submitted to you for approval? A. Not generally in that instance because the business that we do with RKO is not sufficient volume to make it very important. (970)

Q. In any event, so far as you have any connection with it, do you have any knowledge or information as to negotiations or arrangements which may have been made or are

Charles M. Reagan—By Defendant—Direct

in the process of being made for the showing of RKO pictures in theatres in which Paramount has some interest? A. No, sir, I do not.

Q. And so far as you are concerned, is there any relationship whatever? A. None at all. It is none of my business.

Q. Now, don't you make an effort to ascertain that the rentals paid to Paramount by the theatres in which other defendants in this case have an interest will bear some kind of relationship to the rentals which may be paid to those companies by theatres in which Paramount has an interest? A. Well, I would like to know, but I don't know how to do it, because if I found any of the companies paying better terms than I am getting for my pictures, I would like to sell them at better terms, too.

Q. Do I understand you to say that you do not have any information on the subject as to what terms or arrangements may have been made by the theatres in which Paramount has an interest with those companies? A. I do not have.

(971)

Mr. Wright: Excuse me. May I have the previous answer read?

(Previous answer read.)

Q. Do you mean by that, Mr. Reagan, if you could find out what United Detroit, for example, a company in which Paramount has an interest, was paying for the exhibition of Loew pictures, it puts you in a better position to try to get a higher film rental from United Detroit on Paramount pictures? A. If they were paying more money I would certainly try to get more myself, yes, for my pictures.

Q. Are you able to get the information as to arrangements or negotiations by the theatre operating companies in which Paramount has an interest with any of the other defendants in this case? A. No, sir, I am not.

Charles M. Reagan—By Defendant—Direct

Q. Have you tried to get such information from the Paramount theatres department? A. Yes, sir, I have.

Q. Does the Paramount theatre department furnish you any of that information? A. They do not.

Q. Now, it seems odd to one unfamiliar with the business as to why there should be no exchange of information between the distribution department and the theatre department. And I wish you would explain that to us. A. Well, Mr. Seymour, in the first place, I am responsible for the distribution of Paramount pictures at our company. The head of our theatre department is responsible for the operation (972)

of those theatres. I am not interested in what the results are as far as the theatre operation is concerned, and he is not interested in what my results are; but I am interested in obtaining the best results possible as far as the distribution of my pictures are concerned.

Q. Do you have an incentive compensation which is affected by the success of the operation of the distribution department? A. We do, yes.

Q. Do you personally have? A. I do have. The better results I can get on Paramount pictures the more my compensation amounts to.

Judge Hand: What you are saying now does not seem so very convincing, because you just said before that you would like to know these things and have tried to get them and could not. Now you say you have no interest.

The Witness: Well, what I mean is this, sir: My interest is to do the best I can so far as the distribution of Paramount pictures is concerned. That is the only interest I have. Now, if I could improve the distribution of Paramount pictures by learning the terms that companies in which Paramount are interested are paying for competitors' pictures, and those terms are

Charles M. Reagan—By Defendant—Direct

higher than my own, I certainly would like to have that information in order to improve my own terms.

Judge Hand: Well, that is what I thought.

(973)

Mr. Seymour: If your Honors will bear with me just a moment—unfortunately I cannot prove all this through one witness—I shall establish that the film transactions, the film licenses to the theatres in which Paramount has an interest are entirely negotiated and arranged in the field by the local operators of those theatres, with which Mr. Reagan has no connection and to which he has no access. I know the difficulty of understanding such an elaborate method of doing business, but I am satisfied myself that even where the theatre department and the distribution department are in the same company and they deal in the same office building, which is not the case with Paramount, there is the great secrecy between the two departments; and I am told that has always been so in the business.

Q. Is that your experience, Mr. Reagan? A. Yes, sir.

Mr. Wright: Well, if we are going to have testimony, it had better be from the witness.

Mr. Seymour: I think that is right, Mr. Wright; I am not going to imitate you on that score.

Judge Hand: Yes. Strike that out.

Mr. Seymour: That was an explanation and not testimony, of course.

Q. Now, are there other accounts with Paramount customers where the negotiations are conducted by division man-

(974)

agers in the first instance, in addition to the accounts which you have mentioned? A. Yes, sir, there are.

Charles M. Reagan—By Defendant—Direct

Q. And are those accounts the accounts of exhibitors which have no connection with any defendant in this case?

A. Yes, sir; they are independent accounts where the film rental involved is important enough for the division manager to conduct the negotiation.

Q. Now, can you mention some of the accounts which are handled by division managers? **A.** Well, starting from the west and coming east, the Gibraltar Circuit, which operates theatres in New Mexico and Wyoming and Colorado, negotiations are conducted by Mr. Smith, one of our division managers.

Mr. Wright: What was the name of the circuit? I did not get it.

The Witness: Gibraltar.

In St. Louis, Fanchon & Marco, an independent account, who operates the first-run theatres with whom we do business in St. Louis—Mr. Smith always conducts those negotiations. Mr. Donoghue, who supervises the territory in the Middle and Southwest, he conducts negotiations with Robb & Rowley, an independent circuit; Griffith Bros., an independent circuit; and Mr. Owen conducts negotiations with all of the independent circuits in New York, and many others I don't happen to recall.

(975)

Q. Why are the negotiations with those circuits or exhibitors conducted by division managers? **A.** Because the amount of film rentals that we receive from those circuits is of sufficient importance to justify their handling it.

Q. Is that the same reasons for the negotiations by division managers with Loew's, and RKO and Fox and Warners which you have referred to? **A.** It is.

Mr. Seymour: Now I am going to pass, Judge Goddard, to the subject you raised before.

Charles M. Reagan—By Defendant—Direct

Q. Are negotiations with an exhibitor usually conducted on the basis of a particular run? A. Yes, sir.

Q. And some negotiations are conducted on the basis of a first-run of a product, some second, some subsequent? A. Yes, sir.

Judge Bright: You mean the particular run is established before the negotiation with the exhibitor?

The Witness: Sometimes it generally is established, although that has been the result of years of experience that we have had in negotiating with our customers.

Q. You do not mean that each time there is a negotiation the whole question of run is opened up again? A. No, it is not.

Q. The policy on which the theatre is operated has usually been established over a long period of time? A. Yes.

(976)

Judge Bright: How about a new theatre or new exhibitor?

The Witness: There is nothing established there, and we consider all the factors there and make a decision on whether we want to do business with him on the run that he would like to have.

Q. Now, how is the matter of terms upon which Paramount films will be licensed, determined? A. Determined by negotiation based upon experience we have had with the particular theatre with whom we are negotiating.

Q. Is there any minimum which you expect to get by way of film rental in any of these theatres? A. Well, we have a minimum that we authorize our salesmen to negotiate for, and they negotiate and try to make a deal for terms that are better than that minimum, but they can't make a deal when they can't get at least the minimum.

Charles M. Reagan—By Defendant—Direct

Q. That is a restriction on the salesmen's authority? A. Yes.

Q. Now, have you had the experience at one time or another with most of the exhibitors?

The Witness: Will you repeat that question?
(Question read.)

The Witness: I don't understand it.

Q. Has the Paramount distribution department had experience at one time or another with most of the exhibitors? (977)

A. Yes, sir, I think we have.

Q. What are the various kinds of terms on which Paramount licenses its pictures? A. Well, we license them on straight percentage terms, flat rental terms, guarantee and percentage terms.

Q. What is a flat rental term? A. A flat rental is a definite price or a certain number of dollars that an exhibitor pays for a license for a picture.

Q. Are some pictures licensed for first-run exhibition on a flat rental basis? A. Yes, sir.

Q. And are some pictures licensed on subsequent-runs on a flat rental basis? A. Yes, sir.

Q. And there are some pictures which are licensed in the earlier runs on a percentage basis which are licensed in later runs on a flat rental basis? A. Yes, sir.

Q. Well, what is the general nature of the percentage contract or license? A. Well, a percentage contract is a contract where we receive as film rental a percentage of the gross receipts that the exhibitor takes in at the box office.

Q. Now, are there various variations of the percentage arrangement? A. There are.

Q. Including guarantee and percentage? A. Guarantee and percentage is a contract where an exhibitor agrees to pay,

Charles M. Reagan.—By Defendant—Direct

let us say, a price of \$1,000 plus a share in the receipts in (978)

excess of a certain figure

Q. Now, when you have a percentage arrangement or any variation of a percentage arrangement, do you consider that Paramount is sharing in the profits of that theatre? A. No. The variations that we might have—for instance, we might make a deal for a picture at, let us say, 25 per cent of the gross receipts until such time as a splitting figure is reached and that splitting figure is arrived at by applying the 25 per cent of the receipts plus the overhead of the theatre, plus a certain amount of profit, and then in excess of that splitting figure we share in an increased amount of the receipts.

Q. Do you consider that makes Paramount a sharer of profits with that theatre?

Judge Hand: That is a most objectionable question.

Mr. Seymour: I won't press it.

Judge Hand: "Do you consider".

Mr. Seymour: My difficulty, if your Honor please, is that we have got such an amorphous case to meet.

Judge Hand: All right, but do not ask questions like that.

Mr. Seymour: Perhaps I ought not to add to its amorphous character.

Q. Are you familiar with leasing transactions in which the rental is determined by percentage of the gross receipts (979) of the business?

The Witness: Will you repeat that, please?

(Question read.)

Charles M. Reagan—By Defendant—Direct

Q. Leasing of real estate. A. I know there are many forms of leases made, dependent upon the business that a company does—

Mr. Wright: I assume that is within the Court's judicial notice.

Judge Hand: What is that?

Mr. Wright: I assume it is within the Court's judicial notice that there are other forms of agreement where percentages of the receipts are shared.

Mr. Seymour: If the Court is satisfied and it is within the Court's notice, I am satisfied.

Judge Hand: I am satisfied to hear this answer to this question:

Judge Bright: Read the question.

(Question read.)

A. Yes, I am. I know there are many instances where the rental is dependent upon the basis of the gross receipts that the business does. That is a common practice.

Q. Do you know whether or not in the Paramount Building in New York there is such a lease — A. I know we have a lease with the Walgren Drug Company, or the drug-store in our building, and the rent that they pay is dependent (980)

upon the amount of business that they do, the gross receipts.

Q. Will you explain what is meant by a guarantee against percentage arrangement? A. That is where an exhibitor agrees to pay a certain amount of money against a percentage of the gross receipts. For instance, a guarantee may be \$1,000 against 30 per cent of the receipts, and if the receipts amount to \$10,000, he would pay \$3,000, \$2,000 more than the guarantee.

Q. Now, does Paramount license many of its pictures on one or another of these variations of the percentage basis? A. We do.

Charles M. Reagan—By Defendant—Direct

Q. And does Paramount prefer to license its pictures generally on a percentage basis? A. We do.

Q. And does it have percentage license agreements with exhibitors in no way connected with any defendant in this case? A. We do.

Q. Does it have a number of such license agreements? A. Yes, sir.

Q. Does it also have percentage agreements with theatres in which defendants in this case are interested? A. Yes, sir.

Q. Does the type of arrangement, whether it is percentage or flat rental, or a particular variation of percentage, have anything to do with the question of whether a theatre is an independent, owned by an independent exhibitor or one (981)

in which the defendants in this case have an interest? A. It does not.

Q. What determines which form of rental term is the one that shall be included in the agreement? A. Well, that is determined by our desire to make a deal that we believe is the most fair, is the fairest with the theatre we are doing business with, and any of these types of agreements can be made in order to accomplish that purpose.

Q. Do you try to work it out with the particular theatre or with the particular exhibitor? Is that right? A. That is correct.

Q. And there are all kinds of transactions with exhibitors who are independent and exhibitors who have some connection with a defendant in this case, is that right? A. That is right.

Q. And the deals are indiscriminately negotiated on the best basis that you can make, is that right? A. That is right.

Q. Now, how does the distribution department determine the precise percentage terms on which it desires to license a picture? A. How do we determine?

Charles M. Reagan—By Defendant—Direct

Q. Yes. A. The precise percentage terms are determined by negotiation.

Judge Bright: Don't you have any minimum requirements?

(982)

The Witness: We have, yes.

Q. Generally speaking you try to get at least a certain minimum, I suppose? A. We have made all kinds of deals, but we try to obtain a minimum, a minimum percentage of the gross; but we deviate from it sometimes.

Q. Why is it that Paramount licenses some of its pictures on a percentage basis and others on a flat rental basis? A. We would like to license them all on a percentage basis, but we can't successfully do that.

Judge Bright: Why?

The Witness: Exhibitors object to percentage because they generally have to pay more money for film rental than on a flat rental.

Q. Why do you consider a percentage arrangement desirable from the point of view of the distributor? A. Because that is the fairest method, in my opinion, in which to license pictures.

(983)

Q. Why do you say that? A. Well, you may sell a picture flat rental, and the flat rental price may be low or it may be high. In other words, you may have misjudged the grossing possibilities of the picture; the exhibitor may be hurt or we may be hurt, depending on what price you finally arrive at, flat rental price.

Q. Do you consider that the percentage arrangement gives the distributor a reward for the license measured by the quality of the picture? A. That is the best measure, yes

Charles M. Reagan—By Defendant—Direct

Q. Is there a relationship between the quality of the picture and the box office performance? A. There certainly is.

Q. Do you consider a percentage arrangement fair from the point of view of an exhibitor? A. Yes, sir.

Q. Why? A. Because if you were to sell an exhibitor a picture flat rental, you may oversell it or you may undersell it. If you sell it percentage, you get only what he agrees is a fair percentage of his receipts for the film rental for that picture.

Q. Now is there a term in the business known as preferred playing time? A. There is.

Q. What is that? A. Preferred playing time are those days in the week in which the exhibitor does the most business, Saturday, Sunday, holidays.

(1984)

Q. Does that vary somewhat with particular localities, or is that generally so? A. It is generally Saturdays, Sundays and holidays.

Q. Now in the negotiation of film license contracts, is the preferred playing time an important factor? A. It is very important.

Q. And when Paramount representatives are negotiating license contracts, what part does that preferred playing time have in their negotiations? A. Well, they endeavor to license pictures, if they are sold under a percentage, or guarantee and percentage, to include the preferred playing time, because their film rental is based upon the gross of the picture, and the gross will be better if it receives preferred playing time than it would if it receives what we call off playing time.

Q. Do the salesmen or representatives of the Paramount distributing organization find that representatives of other distributors are seeking to obtain similar preferred playing time? A. Yes, sir.

Q. And when the Paramount representative learns that representatives of other distributors are seeking to do it,

Charles M. Reagan—By Defendant—Direct

does the Paramount representative then defer to them? A. We try to sell our pictures on preferred playing time because that is where we get the best results, and we try very hard to do it because that plays an important part in the film (985)

rental that we earn.

Q. What is extended playing time? A. Extended playing time is the time that is in excess of the initial engagement of a picture. For instance a picture may be sold to play seven days with a provision that if it grosses a certain amount of money in the first three or four days it is extended for another seven days.

Q. Is the distributor interested in trying to get extended playing time? A. Very greatly, because again that determines the film rental we will earn.

Q. And is whether he gets it or not usually affected by the quality of the picture? A. It is.

Q. And is the arrangement to try to make a provision for extended playing time one of the terms in the negotiation of many film rentals? A. It is an important consideration, yes.

Q. And in that respect are the Paramount distribution representatives meeting similar demands of representatives of other distributors? I mean, finding similar demands from other distributors with the same exhibitor? A. Preferred playing time is an important factor for everybody distributing pictures because it has a great influence on the film rental that they earn.

Q. Now, do you make license agreements with exhibitors who have no connection with any defendant in this case, (986)

involving terms for preferred playing time and also extended playing time? A. We do.

Q. And do you also make agreements on those subjects with theatres in which the defendants in this case have an interest? A. Yes, we do.

Charles M. Reagan—By Defendant—Direct

Q. Are they standard terms which you try to get where you can from any exhibitor? A. Yes, sir.

Q. Now, do you find, Mr. Reagan, that there is or is not competition in the distribution of pictures?

Mr. Wright: That is objected to, if the Court please. I do not see that it advances any of the issues to have him give his opinion.

Judge Hand: We will take it.

Mr. Davis: May I hear that question, Mr. Reporter?

Q. (Question read.) A. There is very keen competition.

Q. Will you tell us something about that competition and why it exists? A. Well, in our business the number of customers to whom we can license our pictures is limited by the number of theatres that are in operation or in existence. Our business is not like any other business where the market is as wide as you can make it. Our market is restricted only to the theatres that are being operated. Those theatres have only a certain amount of playing time. They also have only a certain amount of preferred playing time, and we try very (987)

hard, as do our competitors, to sell those theatres, to sell our pictures for as much of the playing time as we can get, and for as much of the preferred playing time as we can get, because that is where our income from film rental must come from; and the competition for playing time, preferred time, and for the licensing of pictures in those theatres is very keen.

Q. Now, in those respects are you constantly meeting competition from other distributors? A. You bet we are.

Q. And is there any difference between the quality of competition so far as the Paramount distribution department is concerned, whether the competition is from the distribution

Charles M. Reagan—By Defendant—Direct

department of one of the defendants or from another distributor? A. They all try just as hard as we do to get as much of the playing time and as good terms as possible.

Judge Hand: What have you to say about the returns for distribution where it is played in theatres of Paramount and other theatres?

The Witness: I don't believe I quite understand.

Judge Hand: Well, who fixes what the film belonging to or licensed by Paramount, will get when played in its own theatres?

The Witness: We negotiate for the license for those pictures with the heads of the various operating (988)

companies, just the same as we do with a competitor. As a matter of fact sometimes the discussions or the arguments that we have are more keen with them than they are with theatres in which we have no interest.

Mr. Seymour: I was going to develop that a little further a little later on, if your Honor please.

Judge Hand: All right.

By Mr. Seymour:

Q. Now I would like to have you tell us upon what basis Paramount distribution department decides upon what run it will license or negotiate for the licensing of its pictures; and I would like to have you tell us as fully as you can the various factors which enter into that decision? A. Well, there are a number of factors that enter into that consideration. First, the size and location of the theatre; the exhibitor operating the theatre; his ability as a showman to produce the maximum film rental income possible. For instance, there may be a theatre that, let us say, has a thousand seats, operated by an exhibitor that, in our opinion, is not as good a showman as another exhibitor who operates a theatre that

Charles M. Reagan—By Defendant—Direct

has eight hundred seats. We may decide that we want to sell the theatre that has 800 seats because we believe we can earn more film rental in that theatre than we could in the theatre that has a thousand seats.

(989)

Q. How could that be so, Mr. Reagan? A. It can be so because the ability of the showman in operating the theatre of 800 seats is better than the ability, or he has greater ability than the exhibitor operating the theatre which has 1000 seats, as a result of which he gets in more gross at the box office. All of our experience in the business based over a period of years, the experience of our salesmen, our branch district managers, division managers and myself, we apply in trying to determine what run, or whether we will sell one theatre a first-run as against another theatre; and it is pretty hard to put into words all of those factors. I have given them to you as best I can.

Q. Now do those factors particularly apply to the choice of a customer who will be licensed on the basis of a first-run?

A. They apply to all customers, whether it is first-run or any run.

Q. Are there any other factors that are particularly applicable to the selection of a first-run customer? A. Well, a good first-run customer, a showman, can help us a lot in establishing the Paramount pictures that he plays throughout the entire territory. If he is a good showman, properly advertises and publicizes our pictures, it helps us throughout the country; and we are desirous, of course, in getting the

(990)

best showmen that we can, particularly for those first-run theatres, keeping in mind the size of the theatre, the location of the theatre, the appointments of the theatre, and all of the factors that enter into consideration.

Q. Now, of course, generally, or perhaps universally, Paramount's pictures are licensed to the theatres in which Paramount has an interest? A. Yes, sir.

Charles M. Reagan—By Defendant—Direct

Q. And the first-run showing of Paramount pictures where there is a Paramount theatre qualified for first-run exhibition, is in the theatres in which Paramount has an interest? A. Yes, sir.

Q. Now, from your experience are the local operators of those theatres generally what you would call good showmen? A. I think that the Paramount operators across the country generally are the finest operators of motion pictures in the country. I believe as a group they are the finest, best qualified.

Q. Now it has been developed in the evidence here that in some cities, aside from the theatres in which Paramount has an interest, theatres in which other defendants have an interest, exhibit Paramount pictures first-run in different cities, and also—and I will develop that further—in other cities independent exhibitors have Paramount pictures first-run, and in some of those cities there are theatres affiliated (991)

with a defendant who do not get Paramount pictures first-run. Now, in all those cities what is the basis of the selection of the customer who is to have the first-run? A. Well, the thing we are after is the most film rental possible, and that is the basis on which we determine who we are going to do business with.

Judge Goddard: A little louder, please.

The Witness: Do you want me to repeat that?

Judge Goddard: No, I heard that, but speak a little louder.

Q. Now, are you always able to license your pictures in every respect to the best theatre? A. No, we do not always have the ideal situation. There are some times when we can't license our pictures in what we consider the best theatre in

Charles M. Reagan—By Defendant—Direct

the town, and in that event we do the next best thing. We take the theatre that is next best if we can license our pictures there, and sell them to that theatre.

Q. Now, in making the selection of the theatre to which Paramount pictures are to be licensed first-run, do you apply any different criterion to the theatres in which the defendants in this case have an interest, than you do to theatres in which no defendant has an interest? A. No, sir, we do not.

Q. We will develop that further later on. Now generally (992)

speaking, are the rentals received from customers exhibiting first-run, higher than those received from subsequent run theatres? A. Much higher.

Q. And why is that? A. Well, because the first-run theatres gross substantially more money than the subsequent runs; they are bigger theatres; generally they are better theatres, as a result of which they gross more money, and we earn more film rental.

Q. Now, would you give us some rough idea of the variations between the rental received by Paramount for films in a large first-run theatre or exhibitor on a first-run, and the film rentals received on a late run of the same picture? A. Well, we may earn \$100,000 or \$150,000 as film rental for a picture in a first-run; and that same picture in a subsequent run may earn as little as ten dollars. As a matter of fact, the same print for which we earned the \$150,000 may be licensed to an account from which we receive a film rental of ten dollars.

Q. When you first came into the motion picture business do you recall whether pictures were being licensed on successive or different runs? A. Yes, sir, they were.

Q. And was there clearance of one run over another? A. Yes, sir.

Q. Now I wish you would explain why it is that pictures are licensed on successive runs; and then I will ask you to

Charles M. Reagan—By Defendant—Direct

(993)

explain why clearance is included in the license agreements?

A. Well, pictures are licensed on successive runs, because that is the way in which we can get the most film rental out of a picture. You could not play the same picture in all of the theatres in a locality at the same time, because I do not think it would be good showmanship, in the first place—I mean by that that if you were playing the same picture in all of the theatres in an area at the same time, it may happen that on a particular night there is a big event that is taking place; the President broadcasting or something of that sort, and people don't want to go to the theatre that night, and your gross receipts are affected, which in turn affects the film rental.

There is also another factor. If you license the picture to play in all theatres in the area at the same time, I think you would dilute the gross from the receipts of each of those theatres or at least in some of them to the point where it would not be profitable for them to play that picture. You would spread that gross over too many theatres at the same time.

There is another factor: you do not have enough prints and it is not economically sound to buy enough prints to exhibit pictures in all theatres at the same time.

Q. What would happen if you tried to do that, tried to (994)

make enough prints for simultaneous exhibitions? A. Well, every exhibitor would want to play the picture at the same time; you would have to have twelve thousand or fourteen thousand prints, which you cannot do.

Then there is another factor: By selling pictures on different runs, the first-run may charge an admission price of let us say 75 cents; and there are a certain type or class of people who are willing to pay 75 cents for the privilege of seeing that picture first. There are other people who may

Charles M. Reagan—By Defendant—Direct

not want to pay 75 cents but would pay let us say 50 cents, because while they do not want to see it first, they do not want to wait until it gets to the tail end of the run and pay 20 or 25 cents. So the question of admission price is a factor because the people can see the picture at varying admission prices when varying runs are sold.

(995)

Q. And do you consider that the system of successive runs gives the widest possible opportunity for public patronage of the picture? A. It does, yes, sir, I am sure of it.

Q. Does it, therefore, give the widest possibility of film revenue to the distributor? A. Yes, sir, that is so.

Q. Are films distributed by all the distributors on the basis of successive runs? A. Yes, sir, they are.

Q. That includes all the distributors who are parties to this suit and all other distributors, does it? A. Yes, sir.

Q. What is clearance? A. Clearance is the period of time agreed upon between the exhibitor and the distributor that intervenes between the completion of the showing of a picture in one theatre and the beginning of the showing of the same picture in another theatre.

Q. Between whom is clearance agreed upon? A. Between the exhibitor and the distributor.

Q. And is it confined, the system of, or the custom of having a clearance provision in a license contract, confined to clearance of first-run over second-run or does it prevail through many or most of the runs? A. Through most of the runs.

Q. How is clearance determined? A. It is determined by negotiation between the exhibitor and the distributor and it is the result of the experience that we have had in the business over a period of many years.

(996)

Q. Now, as a matter of fact—

Colloquy

Judge Bright: How can that be determined between the exhibitor and the distributor? If that is so, how can it be based upon your experience over many years?

The Witness: It is the result of the experience that we have had over a period of many years, and what we have determined between the exhibitor and the distributor.

Judge Bright: Then you, after an experience over many years, the distributor, fixes the clearance?

Mr. Seymour: Perhaps I can clear that up.

Judge Bright: Let him clear it up.

The Witness: We agree upon it with the exhibitor. We don't fix it, no, sir. We agree with him on the period of clearance and that is the result of what we believe will return to us the best film rental or the greatest amount of film rental from all the theatres in a given area.

Judge Bright: No, but if an exhibitor says he would like seven days clearance, not more than seven days clearance over a prior run, and your experience is that he must take not less than fourteen or twenty-one days, there isn't much he can do, is there?

The Witness: Well, I should say most—I shouldn't say most—all exhibitors will take as much clearance as they can get one over the other because they are

(997)

interested in the business they do in their theatre, and we grant the clearance that we believe is fair to these exhibitors with whom we are doing business in order to get the maximum film rental out of a picture in each of those theatres.

Judge Goddard: The prior theatre wants a long clearance?

Charles M. Reagan—By Defendant—Direct

The Witness: The prior theatre wants as long a clearance as he can get.

Judge Goddard: The subsequent ones want short ones?

The Witness: The subsequent one wants as long a clearance as he can get over the succeeding theatre.

Q. And your interest in clearance is to protect your revenue in all those runs? A. I want to get the most revenue I can for a picture from all those runs.

Judge Goddard: I want to ask this question: There is no uniform standard, as far as you know, that can be applied—

The Witness: No, sir.

Judge Goddard: —to clearances?

The Witness: There is not.

Judge Goddard: It depends on the elements of each particular situation?

The Witness: Yes, sir, each situation you must consider as and of itself and based upon the experience

(998)

that we have had in business, we arrive—

Judge Goddard: All the different factors?

The Witness: All the different factors.

(Continuing) —we arrive at the clearance.

Judge Bright: You mean it differs in different localities?

The Witness: It differs in different localities and differs in different theatres in the same locality.

Q. You don't mean to say, Mr. Reagan, of course, that every time there is a negotiation for a film license of a block

Charles M. Reagan—By Defendant—Direct

of pictures the subject of clearance that that theatre is to take over other theatres is negotiated anew? A. No, I don't mean that because the clearance you have agreed upon is understood; unless either the exhibitor or the distributor wants to change that clearance, you assume and he assumes that the clearance will be the same as it was at the time the last sale was made.

Q. In other words, once having been negotiated it continues until one or the other of the parties—— A. Until one or the other wants to change it.

Q. And there is a difference in interest in the period of clearance between the exhibitor and the distributor, is there?

A. There is always—not always, but generally, many instances, difference, yes.

Q. The distributor would like to protect his revenue all (999)

the way along and the exhibitor would like to protect the one film in which he is interested? A. Yes. We want to get the most we can in film rental out of all the theatres in a given area and, in order to do that, we sit up and try and agree with each of the exhibitors with whom we do business upon clearance that we believe is fair and that will return to us the greatest amount of film rental, whereas from the exhibitor's standpoint, he is interested in only getting as much clearance as he can over his succeeding run because he has no interest in the succeeding run. We do have.

Q. It has been stated, and perhaps there is evidence in the case on this, that frequently, and perhaps in most cases, the clearance granted by one distributor to a theatre is identical or nearly identical to the clearance granted by another distributor to the same theatre. First, is that a result of any agreement or understanding between the distributors?

Mr. Wright: Same objection.

A. No, it is not the result of any understanding or any agreement but in practice here is the way it works out: If we

Charles M. Reagan—By Defendant—Direct

agree with an exhibitor and believe that, let us say, seven days clearance is the proper clearance for that theatre to have over the succeeding run, and we have done that based (1000)

upon the experience that we have had in the business of the theatre, considering all the factors that we are familiar with, if it is best for Paramount pictures playing in that theatre, it would pretty generally follow that it would be best for the other distributors' pictures too because that is the thing that has been proven to be right over the period of time.

Q. How would they find out about it? A. I beg your pardon?

Q. You do not furnish copies of your license contracts to the other distributors. How would they find out what clearance Paramount granted? A. Let us say we were doing business with an exhibitor and we agreed upon a seven-day clearance over the succeeding run. Then one of the competitors came in to sell pictures and he wanted 14 days clearance. Of course, the exhibitor would say, "Well, I buy Paramount pictures with a clearance of seven days, and if you don't sell me your pictures with the same clearance, I am not going to buy them."

Q. Would you say that the uniformity in the clearance is, then, the result of ordinary competitive negotiation?

A. Yes, it is.

Q. And once having been established in license agreement, it continues sometimes for a long period of time?

A. Yes, sir, that is right.

Q. And have clearances been modified from time to (1001)

time? A. They have.

Q. As a result of agreement between exhibitor and distributor? A. Yes, sir.

Q. And have clearances been modified in a number of arbitration cases under the consent decree? A. Yes, sir, they have.

Charles M. Reagan—By Defendant—Direct

Q. Where the clearances have been modified under the consent decree have the resulting clearances been uniform?

A. Yes, sir, that is the case.

Judge Goddard: What do you mean by that, resulting clearances uniform?

Mr. Seymour: Well, the natural consequence of an award, reducing clearance, is to reduce the clearance as far as all distributors are concerned. In other words, if—

Judge Goddard: As to that particular theatre?

Mr. Seymour: As to that particular theatre—uniform as to that theatre.

Judge Goddard: Yes.

Mr. Seymour: That is all I want to make plain, and that is inevitable in the operation of competition and of a system for reviewing the results of competition, I think.

Q. Mr. Wright asked Mr. Rodgers yesterday a question—

Judge Hand: Is that true even though the returns
(1002)

and the success of the picture are entirely different?

Mr. Seymour: Well, you see, the clearance arrangements are made between them before the success of the picture is determined and that is the arrangement upon which the film is licensed. I think I will develop also in a moment the exhibitor's interest in the uniformity, but I would like to ask this question.

Q. Mr. Wright suggested to Mr. Rodgers yesterday that the distributor could get the same film revenue and would be just as well off if, instead of providing clearance in license contracts, he just licensed runs in accordance with his own

Charles M. Reagan—By Defendant—Direct

whim but on the same basis as they are now licensed with the period of clearance in between but without saying so. Have you any comment to make on that? A. I don't think you could. I don't think you could license the pictures that way because when an exhibitor agrees to pay you certain terms or certain film rentals, one of the considerations for making that agreement is that he knows that there will be a certain period of time between the time he completes his engagement of that picture and the time it starts in another theatre, and that is an important factor. There is lots of money involved in those license agreement, and I think—and I am sure he would not just let you say, "Well, I am going to sell you this (1003)

picture first-run and then you go ahead and do what you want to after you get through with that." He wants to know how long—in addition to licensing the picture first-run, he wants to know how long a period of time is going to elapse between the time he finishes and when it is made available to the run that plays it after him.

Q. In your opinion would the exhibitor pay as much film revenue if the question of how soon after him a competitor theatre would play were left to the whim of the distributor? A. No, sir, he would not, because that is an important part of the consideration.

Q. Why is that so? A. Because his ability to pay is based upon the amount of business that he does and if he is charging, let us say, 75 cents admission for a picture and the subsequent-run theatre, the theatre that follows, charges 50 cents, the period of time that intervenes between the time that he finishes and the time that the other man starts determines how many people are going to wait to see the picture at 50 cents and how many are going to see it at 75. His gross is affected. In turn our film rental would be affected if that clearance were left just to the whim of ourselves.

Q. In the cases where there is a difference in clearance granted by particular distributors, have you any experience

Charles M. Reagan—By Defendant—Direct

as to whether the subsequent-run exhibitors would prefer to
(1004)
have a clearance over other theatres identical? A. Will you
repeat that, please?

Mr. Seymour: Strike out that question and let me
put it this way:

Q. From your experience in the business, is there an advantage to a subsequent-run exhibitor in having the clearance of all pictures which he exhibits identical in the immediately preceding run?

Mr. Wright: I do not think he is in a position to speak for the subsequent-run exhibitor, as to what advantages he may have. You have never been one, I take it?

The Witness: No, I have not.

Mr. Seymour: I think from his experience in the business he can give us an answer. The weight is for the Court.

Judge Hand: I will sustain the objection.

Q. Where there is a difference in clearance of the prior run, that is, one distributor grants seven days, one distributor grants 14 days, one distributor grants 8 days, so on, would that have any effect on the steady flow of pictures to a subsequent-run? A. Yes, it would. If the pictures became available at different times to a subsequent-run exhibitor, it may be difficult for him to book his theatres. He may not have an even flow of pictures.
(1005)

Q. Does the distribution department of Paramount advise the distribution department of any other defendant in this case as to the terms or provisions of the license contracts which it makes with any exhibitor? A. No, sir, we do not.

Charles M. Reagan—By Defendant—Direct

Judge Bright: Does the question of clearance in any way depend upon the quality of the picture to be exhibited?

The Witness: No, I would not say it would, sir. Depends on the other factors that I have mentioned. Clearance, once it is agreed upon, we go along on that clearance unless somebody is dissatisfied or we are dissatisfied. In that event, we then sit down and discuss it, but the same clearance generally applies to all pictures, whether it is one of our best pictures or whether it is one of our lesser pictures.

Judge Bright: Are your license contracts uniform in every instance?

The Witness: Yes, sir.

Judge Bright: Makes no difference whether it is between the independent and the defendant producer—

The Witness: No, sir, none whatever. Same license.

Judge Bright: The same license in every instance for all pictures?

(1006)

The Witness: Yes.

Judge Bright: And for all theatres?

The Witness: Yes, sir.

Q. That is, the basic agreement is the same; there is a variation in terms, of course? A. The terms, yes.

Judge Bright: I mean, the printed portion of your license agreement.

The Witness: That is the same with all.

Mr. Seymour: I am coming to another subject, if your Honors are ready to recess.

Judge Hand: Yes, we will adjourn until 2:15.

(Recess to 2:15 p.m.)

Charles M. Reagan—By Defendant—Direct

(1007)

AFTERNOON SESSION.

CHARLES M. REAGAN resumed the stand.

Direct Examination continued by Mr. Seymour:

Q. Mr. Reagan, when we were discussing clearance, you gave an example of the negotiation with an exhibitor which as I remember it, you put somewhat this way: if Paramount should agree to a seven-day clearance and another distributor should come in and offer a fourteen-day clearance, the exhibitor would say, "Why should I take a fourteen-day clearance when I can get a seven-day clearance from Paramount?" Now I should like to have you tell us whether you intended to put the example that way, and correct it if there was an inadvertance in it? A. I meant the reverse. I meant if he could buy other companies' pictures with a fourteen-day clearance he would not buy mine if I were only willing to grant a seven-day clearance.

Q. And that is, of course, because the exhibitor wishes to get as long a clearance as he can? A. As he can, yes.

Q. Now let us assume that as to the prior run exhibitor, in the case of distributor A, there is a fourteen-day clearance, and in the case of distributor B, there is a twenty-one-day clearance in the license agreements, so in that case there

(1008)
happened to be a difference, in the case I have put; and when distributor B comes to negotiate with a subsequent run exhibitor, will the existence of that different clearance on the prior run have any effect in his ability to negotiate with the subsequent run? A. Well, in that case, if somebody is granting 21-day clearance, some of the other distributors are granting 21-day clearance, and I only want to grant 14, then he won't want to buy my pictures.

Charles M. Reagan—By Defendant—Direct

Q. No, I am talking now about the subsequent run exhibitor. A. I don't believe I followed you there.

Q. Let me make my example clearer. Suppose as to a first-run or any prior run there is a difference in the clearance granted by two distributors. Distributor A grants 14-day clearance and distributor B grants 21-day clearance. Then the two distributors negotiate separately with the exhibitor having the next run. Would the fact of difference on the clearance in the prior run affect the ability of the distributor to negotiate for a license contract with the subsequent run? A. No, I do not think so.

Q. Would not the subsequent run exhibitor be inclined to refuse to buy the product of the distributor who sold him subject to a longer clearance than the other distributors? A. Yes, that is right.

Q. In that sense it might have some effect on creating (1009) similarity in the clearances granted on the earlier runs, is that so? A. Yes.

Q. And that would be as a result of competitive negotiations? A. Yes, sir.

Q. Now does Paramount include in its license contracts a reference to the minimum admission price to be charged by the particular exhibitors licensed? A. Yes, sir, we do.

Q. Now, do you know approximately how long in the business provision for minimum admission prices have been included in some license contracts? A. Well, it has been ever since I have been in the business.

Q. That is at least since 1920? A. Since 1920, yes.

Q. Have you from time to time during your connection with Paramount had occasion to negotiate with exhibitors the terms of license contracts? A. Yes, sir.

Q. And in the course of those negotiations has the question of minimum admission price come up? A. Yes, sir.

Charles M. Reagan—By Defendant—Direct

Q. Now, who is it, as a matter of practice, who actually determines the minimum admission price which is to be included in such license contract?

Mr. Wright: If the Court please, I should think he should be confined to what actually happened relative to this, rather than his conclusions as to how these things are determined.

(1010)

Mr. Seymour: He has stated he participated in such negotiation.

Judge Hand: I will allow it.

The Witness: Will you repeat that question, please.

Q. (Question read.) A. The exhibitor.

Q. Is it a special admission price in connection with the particular license which he determines, or is it his regular admission price? A. It is the admission price that he regularly charges.

Q. And that is ascertained and included, is it? A. Yes, sir.

By Judge Bright:

Q. Well, does that fix his right to a particular run or to clearance? A. It would have an influence upon the run and clearance, yes, sir.

Q. What do you mean by influence? A. Well, I would not sell an exhibitor who was charging an admission price of let us say 25 cents a first-run if I thought that the first-run admission price should be higher, 40 or 50 cents; or I would not permit or I would not sell an exhibitor who was charging 25 cents with clearance over another exhibitor if the other exhibitor charged the higher admission price, in most instances.

Charles M. Reagan—By Defendant—Direct

By Mr. Seymour:

Q. Why are you interested?

(1011)

Mr. Seymour: I do not mean to interrupt you, Judge Bright.

Judge Bright: No, no interruption.

Q. Why would you be interested in the minimum admission price or the admission price charged by the exhibitor in connection with determining what run you would negotiate for? A. Because the admission price that he charges determines the film rental that I can earn for my pictures.

Q. That is the thing which you get a percentage of? A. Yes, sir.

Q. When translated into gross receipts at the box office?

A. Yes, sir.

Q. Now, is it a part of a license contract with Exhibitor A on a prior run what Exhibit B on a subsequent run shall charge as admission price?

Mr. Wright: If the Court please, that is an extremely general term. I submit that those contracts themselves show exactly what the situation is there.

Judge Hand: I think they really do. That is a conclusion that you are asking for that you can argue in support of from the contract. It depends on your view of the law how you would answer that.

Mr. Seymour: No, not this question I think, if your Honor pleases. I do not want to labor it, but the Government has made some selection among license

(1011-A)

contracts. Now as we know here, there are thousands of license contracts every year by each company, and what I am asking generally is this, whether there is a reference in the contracts to the admission price to be

Charles M. Reagan—By Defendant—Direct

charged by a subsequent run. I do not believe there is any contract in evidence which contains it, and I am merely asking that generally.

Judge Hand: That question you may ask, whether there is a reference in the contract.

A. No, sir, there is not.

Judge Bright: It is only with reference to the particular exhibitor?

The Witness: Yes, sir, that is correct.

(1012)

Q. Is the admission price to be charged by a subsequent exhibitor an element in the negotiations with the prior run exhibitor? A. No, sir.

Q. From time to time are there special attractions which are licensed with a provision for a higher admission price than regularly charged by the exhibitor? A. Yes, sir.

Q. In the case of Paramount how often has that happened, say, in the last five years? A. Let's see. We have had three pictures, "For Whom the Bell Tolls," "Northwest Mounted Police," and "Reap the Wild Wind," which we licensed at prices, admission prices, that were higher than the theatre normally charged, and that has been in the last several years. I don't know just exactly when.

Q. Were there any special qualities about those pictures which induced you to ask that the theatre exhibit them at a higher admission price? A. We thought so.

Q. What were they? A. They were highly successful box-office attractions and they were very costly pictures. We felt that we were justified in asking for increased admission prices on those subjects.

Q. Were they different in length from the ordinary feature picture? A. Yes, they were longer than the ordinary feature length picture.

Q. Can you tell us how much longer? A. Well, an ordinary

(1013)

feature length picture runs from about 60 to 90 min-

Charles M. Reagan—By Defendant—Direct

utes. In the case of "For Whom the Bell Tolls," it was 2 hours and 37 minutes, I believe.

Judge Bright: Full performance?

The Witness: Yes, sir.

Judge Bright: Did those extra admission prices apply in the case of third, fourth or fifth runs?

The Witness: Yes, sir; it applied in the cases of all runs.

Q. That is, you tried to get a higher film revenue and to get it asked them to charge higher admission prices? A. Yes.

Q. In those cases why was Paramount interested in having the exhibitors charge a higher admission price? A. Because it would improve our film rental returns.

Q. How is the admission price to be charged on such special attractions negotiated? A. By agreement between the exhibitor and the distributor.

Judge Bright: Did I understand you to mean that the same scale of admission prices was made mandatory on all of the runs?

The Witness: We sold those pictures for increased admission price whenever we sold them, yes, sir.

Judge Bright: Were they the same increase on all runs?

(1014.)

The Witness: Well, in the case of "For Whom the Bell Tolls," we released that picture at increased admission prices and whoever played it, played it at a minimum admission price of 75 cents matinee, and 75 cents and \$1.10 at night.

Judge Bright: On any run?

The Witness: Any run, yes, sir, until we released it at regular prices a year later.

Charles M. Reagan—By Defendant—Direct

Q. That is, this was a special opportunity to show it in advance— A. Yes, sir.

Q. (Continued) —at increased admission prices, but if the exhibitor preferred to wait and take it at regular run, then he exhibited it at his regular admission price? A. That is correct.

Mr. Seymour: One of my colleagues, Judge Bright, is anxious that you should have heard that last question and answer, and if you did not, I would like to make it clear. I wonder if the stenographer will read it.

(Question read.)

Judge Bright: How is it that in my case I paid only the regular admission price when I saw it?

Mr. Seymour: That is the distinction.

The Witness: "For Whom the Bell Tolls"?

Judge Bright: "For Whom the Bell Tolls." I thought they were giving me a special price.

(1015)

Mr. Proskauer: Would your Honor let me suggest that we cannot quite hear Judge Bright over here and we want to get in on these questions.

Judge Bright: I will try to keep my voice up.

Judge Hand: This is a confession.

Mr. Proskauer: I want to hear Judge Bright.

Judge Hand: Apparently extorted because of the examination.

Q. Do exhibitors generally, in your experience, ordinarily charge the same admission price over a long period of time?

A. Yes, sir, they do.

Q. And do you know why that is? A. Well, that is because they have found that the admission price that they were charging—

Charles M. Reagan—By Defendant—Direct

Mr. Wright: If the Court please, for him to tell us what these exhibitors have found is not competent.

Mr. Seymour: A man who has been in the business for 25 years.

Judge Hand: What is the question?

(Question read.)

Judge Hand: We will allow that.

A. They do it because they have found that the admission price that they are charging is the most profitable at which they can make the most profit for their theatre.

Q. Would there be difficulties created in that business (1016)

if they changed their admission prices from picture to picture, or repeatedly? A. I think the public would object because they would not know what price they had to pay when they came to the theatre. I think a theatre can be most successfully operated by charging the same admission price generally.

Q. Is there any difference in that regard whether an exhibitor is a so-called independent operator or whether the exhibitor is a theatre in which one of the defendants in this case has an interest? A. No, sir.

Q. It is said that it frequently happens that the minimum admission price in contracts with a particular exhibitor, from several distributors, refer to the same admission price. Does that result from any agreement or understanding between the distributors? A. No.

Mr. Wright: Same objection.

Judge Hand: Same ruling.

Q. What is the cause of that similarity? A. I believe the reason is the same that I just gave, he has found that the ad-

Charles M. Reagan—By Defendant—Direct

mission price he is charging is the one that he can most profitably operate his theatre at.

Q. Occasionally it appears that the admission price in a particular license contract is left blank. Can you tell us why that is? A. Well, it is probably—

Mr. Wright: That is far too general. In some (1017)

cases it may be left blank with a purpose, I suppose, in others it may be through inadvertence, but I do not think he is competent to give testimony in this general form as to what happens in unspecified instances.

Mr. Seymour: Let me pin it down a little more closely then.

Q. It appears that in some of the Paramount license contracts occasionally the blank for admission prices is not filled in. Why does that occur? A. Well, it is either through inadvertence or anxiety on the part of the man making the deal to get the contract signed and get them out of the way and behind him, and he knows there would be no change in the admission price, otherwise he would be told so.

Mr. Wright: I move to strike out as to what he knows. This witness cannot know that.

Judge Hand: Yes, I will grant that.

Mr. Seymour: May I understand how far your Honor's ruling goes? Does it go to the whole answer?

Judge Hand: What he knows.

Q. As a matter of fact, is there a discussion or a negotiation with respect to the minimum admission price on each occasion when a new license contract is negotiated by Paramount? A. No.

Q. Why not? A. Well, because they know the same admission prices will apply. (1018)

Charles M. Reagan—By Defendant—Direct

Q. Do the license contracts generally contain any reference to a maximum admission price? A. No, sir.

Q. Do the exhibitors from time to time have a higher admission price than the one included in the contract?

A. Yes, sir, oftentimes charge a higher admission price than the minimum specified in the contract.

Q. Is that so of first-runs and also on subsequent-runs?

A. That is true of all types of runs.

Q. If the exhibitor is charging more than the minimum in the contract, is that his decision or the distributor's decision? A. It is his decision.

Q. From your experience in the business is it generally true that the first-run theatres in a particular area have about the same admission price? A. Yes.

Q. And is it generally true that the various subsequent-runs have about the same admission prices in the same area?

A. Yes, in the same area, that is true.

Q. Does that result from any agreement or understanding between the distributors? A. No.

Q. Can you tell us how that general situation comes about? A. Well, one exhibitor will decide to charge a certain admission price and if the theatre is being successfully operated, the others pretty quickly copy it.

Q. Do you consider that the distributor has any business (1019)

interest in the admission price to be charged by an exhibitor to whom he licenses his pictures? A. Yes, sir.

Q. What is the interest? A. Well, our film rental income is directly affected by the admission price that he charges.

Q. Does that apply only to percentage pictures or licenses made on a percentage basis? A. It would apply to all pictures.

Q. Why does it apply to a flat rental picture? A. Because the flat rental price is based on what we believe the

Charles M. Reagan—By Defendant—Direct

theatre will gross, or a percentage of what we believe it will gross, and if we are wrong in our belief, the admission—pardon me, will you read the question again, please?

(Question read.)

A. (Continuing.) —because the flat rental price is based upon what the exhibitor believes he will take in at the box office.

Q. What effect would it have from the distributor's viewpoint if the prior-run theatres in a given area were to—the prior-runs with which he deals—were to lower their admission prices? A. Well, it would not only affect the film rental income in those theatres, but it would also affect, finally affect, the film rental income in the subsequent theatres, because if the prior-run theatres reduce their admission (1020)

prices, then the subsequent theatres could not continue to charge the admission prices that they have been charging.

Q. How would that affect the revenue of the distributor? A. Well, because the revenue is dependent upon the gross receipts that the theatre takes in.

Judge Bright: Are your flat rentals based on admission prices?

The Witness: No—you mean the rental that we charge for flat rentals?

Judge Bright: Fixed rentals.

The Witness: They are not based upon the admission prices—yes, they are specified in the contract, too, the admission prices that they charge on all pictures, flat rental or percentage, minimum prices.

Q. Do you charge a different rental on the same picture in the same locality to a theatre that has a 15 cents admission and one that has a 25 cents admission? A. No, sir.

Charles M. Reagan—By Defendant—Direct

Q. Then— A. Because, if we are right, or if we know the gross of the theatre, what we believe the gross to be, that would be the determining factor of what the film rental we would charge would be.

Judge Bright: In other words, you charge as much as the tariff will permit?

The Witness: That is correct.

(1021)

Judge Bright: Regardless of admission price?

The Witness: Yes, sir.

Q. And you attempt in your flat film rentals to get as much as you can based upon your estimate of what the—

A. Picture will gross.

Q. (Continuing) —the picture will gross in that theatre?

A. Yes, sir.

Q. Is the gross in part dependent upon the admission prices of the theatre? A. Yes, it is.

Q. Let us assume that instead of the prior-runs reducing their admission prices, with the consequences you mentioned on the distributors' revenue, the subsequent-run exhibitors substantially reduced their admission prices; would that have any effect on the distributors' revenue? A. It would have.

Q. And why? A. Well, the differential in admission prices between the various runs is an influencing factor upon the film rental income that we earn, and if subsequent-runs reduced their admission prices too greatly, it would then affect the gross of the prior-runs and our film rental in those prior-runs would be reduced.

(1022)

Q. Now, does the restriction or the provision for minimum admission price in license contracts extend beyond the showing of the particular pictures licensed? A. No, sir.

Mr. Wright: It seems to me, if the Court please, this is entirely argument that is being put in the

Charles M. Reagan—By Defendant—Direct

mouth of the witness here as to how far the contract extends.

Mr. Seymour: I am asking about the generality of agreements in these provisions rather than putting in thousands of them.

Judge Hand: All right.

Q. Is there any restriction in the agreements on the ability of the exhibitor to revise his prices downward, if he wishes to, his admission prices downward if he wishes to after the expiration of the license? A. No. After that particular contract has been completed he can.

Q. After a picture is played do exhibitors from time to time ask the Paramount distribution department for adjustments? A. They do.

Q. Is that a relatively common occurrence? A. Quite common.

Q. Can you tell us why such requests are made and what disposition is made of them? A. Well, an exhibitor will play a picture or pictures, and after he has played them tell us that the result is not profitable to him and ask for an adjustment (1023)

ment in terms; and if we feel that that is the case we make an adjustment.

Q. Why do you make such adjustments? A. Because we think that it is the right thing to do; that an exhibitor is entitled to it; we want to keep him for our customer.

Q. Do those requests for adjustment come from independent exhibitors? A. Yes, sir.

Q. Do they also come from time to time from theatres in which a defendant has an interest? A. Yes, sir.

Q. Do you treat such requests on any different basis depending on the theatre interest involved? A. We do not.

Q. And, as a matter of fact, you have regular forms for applying for modification of agreements, have you not? A. We do.

Charles M. Reagan—By Defendant—Direct

Q. Does it occur occasionally that after a license contract is made the exhibitor asks to have some pictures cancelled out or removed from the agreement? A. It does.

Q. Why does that happen? A. Well, it can happen because after he has bought the picture he does not believe that it will do business for him, and he asks that we cancel it; or, in the instance where after he has bought it he feels it is not the type of picture that is suitable for showing in his theatre, without regard to the profit element, he will ask that it be cancelled.

Q. And how do you dispose of such requests? A. Sometimes we cancel and sometimes we do not, depending on the circumstances.

Judge Hand: I do not see what this is all about. Is it just to show that Paramount is a lovely fellow to its customers?

Mr. Seymour: I am trying to show, if your Honor please, contrary to the contention of the Government, the ambit of which I have difficulty in appraising, that Paramount treats all its customers alike; that there is no element in this case which could give rise to an inference of combination or conspiracy; and your Honors realize, I think, the undisclosed, or, at least, undefined character of this charge; and I therefore have to hit it from as many angles as I can. I realize it is burdensome, but I shall proceed as rapidly as I can.

Q. Is there any difference in the consideration given to such cancellations depending on the source of the request? A. No, sir, there is not.

Q. Do requests for cancellations occur as frequently now as they did before the consent decree? A. No, sir, I do not believe they do.

Charles M. Reagan—By Defendant—Direct

Q. Why is there a difference? A. Well, because they have an opportunity to see the pictures now before they buy them. They did not before the consent decree.

Q. Does it sometimes happen that in some situations you split the product between two exhibitors? A. We do.
(1025)

Q. And in some situations that is between two independent exhibitors? A. Yes, sir.

Q. And in some between two theatres in which defendants have an interest? A. Yes, sir.

Q. And in some with a theatre which is an independent, and the other being a theatre in which one of the defendants has an interest? A. Yes, sir.

Q. Why is product split? A. Product is split because we want to get the maximum returns for each of our pictures; and if we can get more money by dividing the pictures between two theatres or two or more theatres than we can by playing all of it in one theatre, we do that.

Q. Is that the only reason? Does the fact of whether a defendant has an interest in a theatre or not affect whether you split your product? A. No, sir.

Q. Does Paramount have in effect any franchises at the present time? A. I do not believe we have any in existence now.

Q. What is a franchise? A. A franchise is an agreement for the licensing of our pictures for a period of time.

Judge Bright: For what period of time?

The Witness: For more than a year.

Q. It has been suggested that there are four Paramount franchises still in effect. Does that refresh your recollection?

A. I had forgotten those. There are a few. I had forgotten
(1028)

that there were any.

Q. Was there a time when Paramount made a large number of franchises? A. Yes, sir, there was.

Charles M. Reagan—By Defendant—Direct

Q. And why were franchises made? A. Well, we made franchises a number of years ago because it assured us of an outlet for our product in those situations where we made them, and the more selling that we could complete and get behind us the better off we were.

Q. It provided an assured outlet for a time, is that right? A. Yes, sir.

Q. Now, were franchises made with exhibitors who had no connection with any defendant? A. They were.

Q. Were they also made in some cases with theatres in which Paramount had an interest? A. They were.

Q. Were they also made in some cases, in theatres in which one of the defendants in this case had an interest? A. They were.

Q. Did the fact of whether a defendant in the case had an interest or not determine the policy as to whether a franchise would be issued? A. It did not.

Q. Do you know whether, in fact, there were more franchises made with exhibitors in which no defendant had an interest than with those in which a defendant had an interest? A. There were many more franchises made with independent exhibitors than there were with exhibitors who are (1027)

connected or who are defendants in this case.

Q. Has a recent search of the files indicated that there were approximately 157 franchises made— A. There were 157 franchises made with independent exhibitors—

Mr. Wright: Haven't you got a list that you can put in? We can't cross-examine him.

Mr. Seymour: I am just going to ask him the number, and I will give you the list to cross-examine from, Mr. Wright, if you like.

A. (Continuing) There were 33, I believe, with companies with which Paramount is affiliated, and I think there were

Charles M. Reagan—By Defendant—Direct

13 with companies that are affiliated or were affiliated with the defendants in this case.

Q. And with respect to the franchises to independent exhibitors, were some of those made to so-called independent circuits, including a number of theatres? A. There were.

Q. And some made to exhibitors with one theatre? A. There were.

Q. Now, did Paramount discontinue the making of new franchises some time before the entry of the consent decree? A. We did.

Q. Will you tell us why that occurred?

Mr. Wright: How about when, first?

Q. Well, can you tell us when? A. Well, it has been, I should say, eight or ten years ago. I do not believe we made (1028)

any franchises over that period of time.

Q. Well, anyhow, sometime before the consent decree? A. Yes, sir.

Q. Why did Paramount decide generally not to grant further franchises? A. Well, we found this to happen: When we made a franchise that covered a period of time, if the terms were favorable to the exhibitor, of course, he continued to play pictures; and if the terms were unfavorable to him, he had the pictures under franchise but he would refuse to play them, and all we could do was to adjust the terms of the franchise to meet with his satisfaction, or to his satisfaction. And with the increased cost of production and the additional expense in making of pictures, we found that it was unprofitable to continue franchises, and we therefore discontinued making them.

Q. Now, does Paramount license some of its pictures under so-called master contracts? A. We do.

Q. What is a master contract? A. A master contract is a contract that lists the terms on which pictures are sold for a number of theatres.

Charles M. Reagan—By Defendant—Direct

Q. And are master contracts made with groups of theatres unconnected with any defendant in this case? A. They are.

Q. And are they also made with theatres in which defendants have an interest? A. They are.

Q. Is the question of who owns the theatre the determining factor in whether a master contract would be used? A. No. A master contract is used only as a matter of convenience by putting the terms for a number of theatres on one contract rather than making separate contracts for each of those theatres.

Q. Now, the things which are attached to the master contracts are so-called deal sheets, are they? A. Yes, they can be deal sheets, the regular contract form applies, and you attach to them the terms that you list on a deal sheet, or on a separate sheet of paper, whichever is most convenient.

Q. And they are really riders to the contract? A. That is all.

Q. And there are contracts with all kinds of riders, is that right? A. All kinds of riders and with all types of exhibitors.

Q. Do you consider that there are any favors granted in the licensing of Paramount pictures to the theatres in which any defendant in this case has an interest—

Mr. Wright: I submit, if the Court please, it does not make the slightest difference what he considers are favors. What were granted and what were not is shown by the transactions which occurred between

(1030)

them. If he wants to show them, I do not see any reason why he should not show it.

Judge Hand: Overruled.

Mr. Seymour: I do not believe I finished my question.

(Question thus far propounded read.)

Charles M. Reagan—By Defendant—Direct

Q. (Continuing) —in which the other defendants in this case have an interest— A. No, sir, I do not.

Mr. Seymour: I had not finished.

Q. (Continuing) —which are not granted to the theatres owned or operated by independent exhibitors? A. There is not any difference.

Q. Now, does Paramount license its pictures to the theatres in which Paramount has an interest? A. We do.

Q. And are those pictures licensed to those theatres on terms which are called a formula deal? A. They are.

Q. And are those terms, the formula deal terms, worked out with all the companies in which Paramount has an interest? A. No, not all the companies.

Q. Now, is that formula deal term merely a convenient method for determining the rental to be received from those theatres? A. It is.

Q. And can you tell us generally the way that is worked out? A. Well, it is worked out in this way: Prior to the year that we sold a formula deal we found out what percentage (1031)

of our national gross that we received for film rental from a particular Paramount affiliate was; and let us say that was one per cent of our national gross; to that one per cent we added an increase; and then for the first year of the formula deal they paid us that increased percentage of our national gross for the Paramount pictures in that circuit.

Q. Do you consider that that method of computing the film rental gives Paramount a fair film rental? A. Yes, sir, I do.

Q. Do you consider that it gives Paramount a higher film rental than it could get on another basis? A. I believe I have gotten higher film rentals as a result of the formula deal than I could have gotten if I had sold my pictures at regular percentage terms.

Q. And are the terms of that deal negotiated annually with the operators of those theatre companies? A. They are.

Charles M. Redgan—By Defendant—Direct

Q. Now, do you have a somewhat similar basis for computing film rentals in connection with certain theatres in which Fox has an interest? A. We do.

Q. And why were those arrangements made on that basis? A. Well, they were made because after a protracted period of negotiation that I had, and Mr. Smith, a division manager who handles the sale of our pictures to the various Fox affiliates, (1931a)

also had, and we were unsuccessful in making a deal, we finally worked out the formula deal with the Fox affiliates, which is similar to the deal which we have with our own. (1032)

Q. Do you consider that you get a satisfactory film rental that way? A. I am sure in the case of the Fox affiliates that I could not have gotten the percentage of increase over the past several years for my pictures by selling them at straight terms than I got by selling them under the formula deal.

Q. Now, in the distribution of Paramount pictures, do you usually sell or license from year to year to the same customer? A. We do.

Q. And is that true of the licenses granted by Paramount for first-run exhibition and also for licenses granted for subsequent run exhibition? A. It is.

Q. Why is that so? A. Because over the period of years we have found that the exhibitors that we were doing business with are, in our opinion, the exhibitors who can return the best film rental possible in each given situation for the Paramount pictures.

Q. Would it be practicable or desirable as a matter of distribution, where you have a satisfactory customer, to shop around and offer Paramount pictures on the same run to all the competitors or some of the competitors of that theatre?

A. Would it be practicable or would it be possible?

Q. Or desirable. A. No, it would not.

Q. Why not? A. Well, I do not want to sell my pictures (1033)

on the same run to every exhibitor because I do not think I

Charles M. Reagan—By Defendant—Direct

can get the maximum returns for my pictures by selling them that way.

Q. Isn't it possible in a given situation that you would leave an old customer and perhaps get some other theatre to bid a higher film rental for a particular block of pictures?

A. Oh, I am sure I could do that, but if I did, and finally the stronger exhibitor bought the pictures, he may not be able to pay for them what he agreed to pay; he is simply bidding for them in a market that would give the pictures, and then after he got them he may not be able to play them at the price he agreed to pay.

Q. Do you find that by sticking to an old customer that you get better exploitation for Paramount pictures? A. I think—I don't think I know—the customers that I do business with, I am confident that I get the best treatment that is possible for my pictures in each of the situations where I sell them.

Q. Now I should like to put to you a question which Judge Bright asked Mr. Rodgers yesterday or the day before, and see what your answer will be, and I am sure Judge Bright will correct me if I haven't got the question quite right. How can you tell in a given situation where you have a first-run customer whether some other theatre in that (1034)

area would not pay you higher film revenue unless you negotiate with that theatre? A. Well, we have been doing business for a matter of—I have been doing business for a matter of twenty years selling pictures or distributing pictures, and I believe I pretty well know what a theatre can afford to pay for pictures; and while I do not do business with all of the theatres in the United States, I believe that my sales department also knows what a theatre can pay and what they can't pay; and we select our customers based upon what we believe will get the best results on Paramount pictures.

Charles M. Reagan—By Defendant—Direct

Q. But how do you know you could not get better ones by negotiating with some other theatre if you have not negotiated with them?

Mr. Seymour: I think that was the essence of Judge Bright's question.

Q. (Continuing) Is it because you can tell by looking at the theatre and your general experience? A. Well, we have had a lot of experience in this business and we should know what a theatre can pay and what a theatre can't pay for pictures. We believe we do.

Judge Bright: Doesn't that apply to the other distributors as well?

The Witness: I think it does. Then there are some theatres I would like to play my pictures in and can't

(1035) get in, and so I do the next best thing, take the next best theatre in which I can get it in; and I think the same thing applies to other distributors. I am sure it does.

Q. Could you offer your pictures or offer to license on the basis of competitive bidding effectively? A. No, I know we could not.

Judge Bright: Why not?

The Witness: Because I think an exhibitor might not might, but ~~would be~~ willing to give more for pictures than he could afford to pay, and once he had the pictures under contract he could not play them, and I would finally be in a position where I would not get my pictures played in the situation where I had sold them, because the man who bid the highest—it would be an unprofitable arrangement from his standpoint and for mine, simply getting the pictures

Charles M. Reagan—By Defendant—Direct

and then not being able to play them; buying them for more than they are worth.

Mr. Seymour: Have you any further questions, Judge Bright?

Judge Bright: No.

By Mr. Seymour:

Q. What is a circuit? A. A circuit is a group of four or five or more theatres.

Q. Under common ownership and management? A. Yes. (1036)

Q. Are there a number of circuits of theatres in the United States? A. There are.

Q. Which are not connected with any distributor? A. There are.

Q. Tell us approximately how many? A. Oh, there are hundreds. I do not know exactly.

Q. Several hundred? A. Several hundred. I do not know the exact number.

Q. And are some of those circuits composed of twenty, thirty, fifty and some more than a hundred theatres? A. There are.

Q. Are there also a number of theatres independently operated who do their buying and booking through a common agency? A. There are.

Q. Now, when you came into the business were there a number of independent circuits? A. There were.

Q. And has the number grown since you have been in the business? A. Yes. There are more today than there were then. There are more independent circuits now than there were when I came into the business.

Q. What is a buying combine? A. A buying combine is a group of theatres that have gotten together and appointed one man to do their buying and booking.

Q. Do you know how many such buying combines there are in the United States? A. I think about fifty.

Charles M. Reagan—By Defendant—Direct

(1037)

Q. And those are unconnected with any distributor?
A. What?

Q. I am talking about buying combines which are unconnected with any distributor? A. They are not connected with any distributor.

Q. Have you had any experience or dealings with these buying combines? A. Yes, sir, I have.

Q. Have there been occasions when the members of such combinations agreed collectively not to deal for Paramount pictures? A. There have been.

Q. Can you tell us something about those occasions?
A. Well, I recall the Cooperative-Circuit in Detroit, which is a buying combine made up of more than a hundred theatres, refusing to buy my pictures about three years ago because I wanted percentage terms on a limited number of pictures, and they refused to pay it. I did not sell them for about a year or a year and a half.

Q. Have you had any experience with exhibitor groups combining and refusing to buy or license Paramount pictures? A. I have.

Q. Can you give us some examples of that? A. Well, subsequent run exhibitors in the city of Minneapolis came in to see me, or appointed a committee to come in to see me several years ago, and said they were not going to do any business with us because we asked percentage, wanted to sell
(1038)

our top pictures on percentage, and they wanted to know if we would not change our policy; and if we would not change they were not going to buy Paramount pictures.

Q. And did they fail to buy? A. They did not buy for some time. Since then they have bought a limited number.

Q. Have you had any other experiences of that kind in recent years? A. We had an experience in Philadelphia several years ago where a group of subsequent run exhibitors complained that we failed to deliver a picture on one sea-

Charles M. Reagan—By Defendant—Direct

son's contract that they said we had completed and should deliver, which was not the fact. They said if we did not deliver if they would not do any business with us, or if we did not make an adjustment in their contract they would not do any business with us, and they did not for about a year.

Q. Do you consider that it is important to Paramount's business, and particularly to its distribution business, to have some interest in theatres? A. I do.

Q. Why? A. Well, it gives us an assured outlet for our pictures; it gives us the opportunity to advertise and exploit those pictures; it is sort of a show window for us; and it also enables Paramount as a company to make profits out of the operation of those theatres.

Q. Do you know what the total number of theatres is (1039) in which Paramount has some interest? A. I think between fifteen and sixteen hundred.

Q. And do you know how many theatres there are in the United States? A. About seventeen thousand.

Q. So that Paramount has an interest in somewhat under ten per cent of the total theatres in the United States? A. That is correct.

Q. Now, we were talking this morning about the fact that in distributing Paramount pictures you do not get any information as to what kind of negotiations or arrangements are being made by the theatres in which Paramount has an interest; and I want to ask you some questions on that subject: is the distribution department at Paramount wholly separate and distinct from the theatre department? A. It is.

Q. Do you receive from the theatre department details or information with respect to the film deals negotiated or made by theatres in which Paramount has an interest? A. I do not.

Q. Do you receive from the theatre department any extracts or abstracts of contracts made by the theatres in which

Charles M. Reagan—By Defendant—Direct.

Paramount has an interest with other defendants for the exhibition of their pictures in those theatres? A. No, sir, I do not.

Q. Is there communicated to you by the theatre department (1040)

ment or by the operating heads of the theatre operating companies, the terms upon which they have licensed pictures of any other distributor? A. They do not. There is none.

Q. Does the distribution department or any member of it communicate to the theatre department information as to the film deals made on Paramount pictures in the territories in which other distributors have theatres? A. We do not.

Q. Now do you receive from the theatre department telegraphic reports showing the grosses on certain motion pictures played in certain theatres in which Paramount has an interest? A. We do.

Q. Do you receive those regularly? A. Daily.

Q. Do those reports contain any information as to the terms on which the theatres have licensed the pictures shown? A. They do not.

Q. And can you tell us generally the nature of the information contained? A. It lists the name of the city, the theatre, the picture, the gross receipts on the picture by days, and a comparison of the gross receipts between that day and the same day a year ago.

Q. Now, some of those pictures are pictures produced by other distributors? A. They are.

Q. And are you at the time you receive those, licensing (1040½)

pictures in competition with those pictures? A. I am.

Q. Why are you interested in receiving those reports? A. Because it enables me to find out not only what my own pictures are grossing, but also what my competitors' pictures are grossing.

(1041)

Q. In those selected theatres? A. In the theatres listed on that schedule.

Charles M. Reagan—By Defendant—Direct

Q. Why are you interested in the grossing results of the pictures of other distributors? A. The more I know of the grossing possibilities of my competitors' pictures, I think the better qualified I am to make the proper deals for my own pictures.

Q. Are those the only reports you receive from the theatre department? A. That is the only report.

Q. Is information of that general character available in the trade press? A. It is.

Q. Why don't you get it from the trade press? A. Well, I can get it faster because these are daily reports and they are more accurate than the information I would get from the trade papers.

Q. Have you any personal interest in theatres? A. I have not.

Q. Have you any financial interest or any other kind of interest in any other producing, distributing or exhibiting company? A. I have not.

Q. Do you ever discuss with the sales or distribution representatives of any other company the terms upon which you have or are licensing the exhibition of Paramount pictures to any exhibitor? A. No, sir, I do not.

Q. Have you discussed with the sales or distribution

(1042)
representatives of any other company the exhibitors whom you will or have or have not licensed on Paramount pictures? A. I do not.

Q. Do you consider the terms upon which you license Paramount pictures a business secret of Paramount? A. It is a business secret of our own company.

Q. Does it sometimes happen that a picture which hasn't had a high production cost is a great box office success? A. It does.

Q. Does it sometimes happen that a very expensive picture is not a box office success? A. That happens also.

Charles M. Reagan—By Defendant—Direct.

Q. Can you give us some examples of those two things in Paramount? A. Well, I think of a picture called "High, Wide and Handsome", which we released a few years ago, and which cost us \$1,800,000 and it grossed less than a million dollars. I think of another very expensive picture called "Angel", which was very disastrous at the box office and very unprofitable to us, and I think of a picture that was comparatively inexpensive, "Going My Way", which cost about a million dollars and grossed about seven million in this country.

Judge Bright: That is because Bing Crosby was the star?

The Witness: Not because Bing Crosby was the star. He has been a star in a number of our pictures, (1043)

but we have never had a picture in which Crosby appeared that grossed half of that money. It was because of the picture itself, popular appeal.

Q. Has it been the practice of Paramount to distribute pictures produced by independent producers? A. It is.

Q. How do you define independent producer? A. An independent producer is a producer who makes pictures independently but has no national distributing facilities for the distribution of those pictures or of the pictures that he makes.

Q. Such a producer distributes through some other distributing organization? A. Yes.

Q. Can you give us some examples of pictures produced by independent producers which Paramount has distributed in recent years? A. Well, we distributed the Harry Sherman pictures, which were the Hopalong Cassidys, that were independently produced. We distributed a picture called "Jamaica Inn", which was independently produced in England and distributed by us in this country. We at present

Charles M. Reagan—By Defendant—Direct

distribute the Pine Thomas pictures which are independently produced. We also distribute the Hal Wallis pictures, which are an independent production, and the Buddy DeSylva pictures, which are also independently produced.
(1044)

Q. In your observation is there competition among the various distributors for an opportunity to distribute a high quality independently produced picture? A. Keen competition for that opportunity.

Judge Bright: Do you call all those pictures you just mentioned high quality pictures?

The Witness: They aren't all high qualities, no. The Harry Sherman pictures, Hopalong Cassidys, were made—they are Western pictures of good quality but they cannot play the A theatres or the better theatres, of course, in the United States.

Q. They are good Western—

Judge Bright: They play in most of the double feature picture theatres?

The Witness: No, they play a lot of theatres that play single feature too but they play on the weekends, Friday or Saturday, when the youngsters are out of school and have a chance to see them.

Q. The "Beachcomber," which you mentioned, "Charles Laughton— A. I did not mention the "Beachcomber." I had forgotten it. I mentioned "Jamaica Inn." "Beachcomber" is also a picture which we distributed, which was independently produced.

Q. Was that, the Charles Laughton picture? A. Yes, sir.

Q. Do you remember whether Paramount distributed a picture about the Mississippi called "The River"? A. We did.
(1045)

Charles M. Reagan—By Defendant—Direct

Q. Was that a high quality picture? A. Yes, that was a fine quality picture.

Q. Did you distribute a picture called "The City That Stopped Hitler"? A. We did.

Q. Who was that produced by? A. I think it was produced by the Russian Government.

Q. That was a picture about Stalingrad? A. Yes.

Q. Now, in the average large size community, where there are some theatres operated on a first-run policy and other theatres operated on various subsequent runs, do you consider that all those theatres are, to a degree, in competition with each other? A. I do.

Q. Why do you think so? A. Well, they are all in competition with each other because they are showing the pictures and the customers go to one or the other. They may go to a theatre that charges 75 cents—first-run theatre—one time, next time they may go to the second-run that charges 50 cents; another time may go to a one that is a subsequent-run, that charges 35.

Q. They have their choice among the theatres and the admission prices and the pictures? A. That they want to pay, to see them at.

Q. From your observation and experience is there any (1046)

separate group of the population which is a definite first-run market and only sees pictures first-run? A. No, sir, I don't think there is.

Q. Any member of the public sometimes goes to first-run, sometimes later runs, and so on? A. I think that is so.

Q. Does Paramount sometimes license its pictures on what is called a move-over run? A. We do.

Q. What is a move-over run? A. A move-over run is a run where the engagement is started in one theatre and then moved to another theatre at which the same admission price is charged.

Charles M. Reagan—By Defendant—Direct

Judge Bright: Another theatre of the same owner?

The Witness: Yes, sir, the same owner, always the same owner.

Q. Why is that? A. Well, because the man who buys the picture first-run does not want to share that first-run engagement with somebody else. He wants it for himself. And the reason for the move-over is because he may play the picture first in a big theatre where the overhead is very high and then, as the gross begins to go down, he moves it to another theatre where the overhead is lower and completes the engagement there.

(1047)

Q. You said "always the same owner." I suppose that was another way of saying "same operator"? A. Yes.

Q. Two theatres may possibly be in different ownership but operated by the same hands? A. Yes.

Q. Does Paramount have any policy that it will only grant a move-over to a theatre in which it has an interest? A. No, we sell move-overs wherever we think it is to our advantage to do so and where it will improve our film rental.

Q. Are some of those move-overs licensed to independent exhibitors? A. They are.

Q. And are they sometimes licensed to exhibitors in which a defendant has an interest? A. Yes, sir.

Q. And are they sometimes granted to a theatre in which Paramount has an interest? A. Yes, sir.

Q. It has nothing to do with it; the question of whether a move-over is granted is unaffected by precisely who owns the theatre as long as the second theatre is operated by the same person or interests as the first theatre, is that right? A. That is, as long as the admission price is the same.

Judge Bright: Does the move-over have to occur in the same time period as mentioned in the original

Colloquy

license or is there additional time given for that purpose?

(1048) The Witness: You could really call it an extended

run except it is moved from one theatre to another because of the difference of the overhead in the second theatre.

Judge Bright: I don't mean that. You license A for a first-run on a picture in a particularly named theatre?

The Witness: Yes, sir.

Judge Bright: You permit a move-over, however. Has he got to move it over within the period of time that he is permitted to exhibit under that license or is additional time given to him?

The Witness: In the original instance we may sell a picture for its engagement in one theatre for, let us say, 14 days. The business is good. He wants to move it over to the other theatre for a continued run. We agree to do that.

Judge Bright: After the 14 days?

The Witness: Immediately following the 14 days.

Judge Bright: What effect does that have on the clearance as against a second-run?

The Witness: There are some instances where the clearance applies after the completion of the original engagement in the first theatre. There are some instances where it applies after the completion of the engagement in the move-over.

(1049)

Judge Bright: When is it determined that he may move over?

The Witness: When?

Judge Bright: When is this additional time given to him by which he may take advantage of this move-over?

Charles M. Reagan—By Defendant—Direct

The Witness: He may do it on any picture that the business justifies.

Judge Bright: During the period of operation of the first showing? What I am getting at is, what effect does it have on the second man, does it just postpone his opportunity to exhibit?

The Witness: It may postpone it. In some instances the clearance starts from the completion of the move-over; in others, it starts from the completion of the original engagement.

Judge Bright: When is that determined?

The Witness: Determined at the time the contract is made.

Q. And the subsequent-run exhibitor, who knows what clearance he is subjected to from the other theatres, knows that the picture may be moved over? A. Depending upon its box office success or appeal.

Q. And the move-over feature—the theatres operating on a move-over policy in a particular community are well known in the trade, are they not? A. They are established, yes, (1050) — sir, they are established.

Q. So it is no surprise to the subsequent-run exhibitor when the first-run exhibitor, having a right of move-over, actually exercises that right? A. No, he knows that picture will be moved over whenever it has sufficient box office strength to justify the move-over.

Judge Bright: Does that apply only to first-run theatres?

The Witness: Yes, we have move-overs only in first-run theatres.

Judge Hand: Do you have simultaneous exhibitions of first-runs in different regions?

Charles M. Reagan—By Defendant—Direct

The Witness: Well, we have simultaneous engagements, for instance, in Los Angeles. We have our pictures play simultaneously between the Paramount Los Angeles and the Paramount Hollywood.

Judge Hand: At the same time, I suppose, they are exhibited in the East?

The Witness: It may be at the same time, it may be earlier or later, depending upon how pictures become available for booking and for how long they run.

Judge Hand: So "first-run" is really a relative term that relates to regional exhibitions?

(1051) The Witness: The first exhibition in each city, that is the first-run.

Judge Hand: Yes.

Q. There is a difference between, or there may be a difference between, an extended run and a move-over, isn't that so, Mr. Reagan? A. An extended run is where you sell a picture, let us say, for seven days in a theatre, the business is good, and the exhibitor decides to play it for 14 days. That is an extended run.

Q. But that is played in the same theatre? A. Played in the same theatre.

Judge Bright: There the same question arises again, what effect does that have on the next fellow, second-run, on the subject of clearance? He buys his picture to have 14 days clearance?

The Witness: He buys the picture following the completion of the first-run showing.

Judge Bright: Can he go on 14 days after the completion of the first-run showing or after the end of the extended term?

The Witness: No, after the completion of the first-run showing, although there are cases where because

Charles M. Reagan—By Defendant—Direct

—no, I don't think there are any extended run engagements. I was going to say that I think there are instances where the clearance starts—no, it couldn't be with an extended run. It is after the completion
(1052)

of the engagement. In an extended run engagement clearance applies—

Judge Hand: After completion. Clearance applies at the end of the extension; it begins to run at the end of the extended run?

The Witness: Yes, it begins to run.

Q. Does the subsequent-run exhibitor, who knows what clearance he is subjected to and negotiates his film rental with the distributor with that knowledge, also know that his clearance may start at the end of an extended run? A. He does.

Judge Bright: Suppose he has booked that picture?

The Witness: He could not book it until after he receives a notice of availability and a notice of availability cannot be sent out until they know when the engagement will be completed in its first-run showing.
(1053)

Q. Isn't it the fact that every exhibitor is desirous of extending the run of the picture on which he is doing good business? A. Yes, of course, the longer a picture runs, whether it is first-run or irrespective of the run, the better result he will get.

Q. And that would apply to the subsequent-run exhibitor? A. Any run.

Judge Bright: Can a subsequent run exhibitor run longer?

The Witness: Yes, you can sell a subsequent run exhibitor—you may sell him three or four days, five

Charles M. Reagan—By Defendant—Direct

or six or seven. He will run the picture for whatever length of time business justifies.

Mr. Seymour: I have to emulate my distinguished friend, Mr. Davis, and take you on a short national tour. I won't take you as far as he did.

Mr. Davis: I did not catch the result in which I was being so flattered.

Mr. Seymour: I said I was not going to take the Court on quite as extended a tour as you did.

Judge Bright: He wants to retill your soil.

Mr. Seymour: I am going to plow only the north forty, though.

Mr. Davis: There is no copyright on mine, Mr. Seymour.

Q. I want to inquire, Mr. Reagan, about the 92 cities (1054)

with populations of over 100,000, and I will first eliminate 48 of them. Is it the fact that in 48 of those cities Paramount licenses Paramount pictures first-run to theatres in which Paramount has an interest? A. Yes, sir, that is correct.

Q. And do you consider that those theatres are the best or comparable to the best theatres in those cities? A. They are certainly the best from our standpoint.

Q. Are there any of Loew's theatres in those cities? A. Yes, sir.

Mr. Seymour: There seems to be some difference of view about the respective qualities.

Just for the record, I am going to read into the record the names of the cities which will be excluded from our tour because theatres in which Paramount has an interest are the theatres which Paramount licenses first-run there:

Charles M. Reagan—By Defendant—Direct

Atlanta, Ga.
 Birmingham, Ala.
 Boston, Mass.
 Buffalo, N. Y.
 Cambridge, Mass.
 Charlotte, N. C.
 Chattanooga, Tenn.
 Chicago, Ill.
 Dallas, Texas
 Des Moines, Iowa
 Detroit, Mich.
 Duluth, Minn.

(1055)

Flint, Mich.
 Fort Worth, Texas
 Gary, Indiana
 Grand Rapids, Mich.
 Hartford, Conn.
 Houston, Texas
 Jacksonville, Fla.
 Kansas City, Mo.
 Knoxville, Tenn.
 Los Angeles, Cal.
 Lowell, Mass.
 Memphis, Tenn.

Miami, Florida
 Minneapolis, Minn.
 Newark, N. J.
 New Bedford, Mass.
 New Haven, Conn.
 New Orleans, La.
 New York, N. Y.
 Oklahoma City, Okla.
 Omaha, Nebraska
 Paterson, N. J.
 Peoria, Ill.
 Rochester, N. Y.

St. Paul, Minn.
 Salt Lake City, Utah
 San Antonio, Texas
 San Francisco, Cal.
 Scranton, Pa.
 Somerville, Mass.
 South Bend, Ind.
 Springfield, Mass.
 Tampa, Fla.
 Toledo, Ohio
 Worcester, Mass.
 Yonkers, N. Y.

Q. In the remaining 44 cities out of the 92 having a population of over a hundred thousand, in some of those cities the theatre which licenses the first-run of Paramount pictures is a theatre in which one of the defendants other than Paramount is interested, is that correct? A. Yes, sir.

Q. And in some of those cities the theatre is independently operated, is that correct? A. Yes, sir.

Q. I am going to take you through those cities. Are you generally familiar with the first-run accounts, Paramount first-run accounts, in those cities? A. I am.

Charles M. Reagan—By Defendant—Direct

Q. Starting with Akron, Ohio, will you tell us who the first-run customer is and why that customer was selected?

A. Well, in the case of Akron, we presently split our product between Loew's and Harry Katz. Until a few years ago we sold all our pictures to Loew. We weren't satisfied with the playing time that we were able to get for our pictures, as a (1056)

result of which we took half the product away from Loew's and sold it to Harry Katz. I believe at present that by splitting our pictures between Loew's and Harry Katz, which is the Loew Theatre and the Palace Theatre, it is the best outlet for Paramount pictures in Akron, Ohio.

Q. Is Katz an independent operator? A. Yes, sir, he is.

Q. Who is your first-run customer or customers in Albany, New York? A. In Albany we split our product between the Palace Theatre, which is operated by Fabian, and the Strand Theatre, which is operated by Warner. We would prefer to sell all our pictures to Fabian because he has the biggest theatre. We couldn't do that, though, so we did the next best thing, we sell half of them to Fabian and the other half to Warner, who has the second-best theatre.

Q. Does it sometimes happen that a customer is only able to buy half your product because of other circumstances? A. That is the instance here.

Q. How about Baltimore, Maryland? A. In Baltimore, Maryland, we divide our product between the Stanley Theatre, which is operated by Warner Bros., and Keith's Theatre, which is operated by Mr. Schanberger.

Q. Is Schanberger an independent operator? A. He is. (1057)

Q. Will you tell us why the product is divided there? A. Because in the case of Baltimore I believe we get the best results for Paramount pictures by splitting our product between the Stanley and the Keith theatres.

Charles M. Reagan—By Defendant—Direct

Q. Bridgeport, Connecticut. A. In Bridgeport, Connecticut, we sell our product to Warner Bros. and they play Paramount pictures on a day and date basis between the Warner and Merritt theatres. "Day and date" means that they play at the same time in each theatre.

Q. Camden, New Jersey? A. In Camden, New Jersey, we sell our pictures to Warner Bros. there. They have the most desirable theatre in town, the largest.

Q. Canton, Ohio. A. In Canton, Ohio, we sell our pictures to Loew. There again Loew's have the biggest theatre and a theatre that, I believe, can gross the most money for Paramount Pictures. Therefore we do business with them.

Q. Cincinnati, Ohio. A. Cincinnati, Ohio, we at present sell our pictures first-run to RKO, who operate the Palace, the Albee, Capitol, Lyric, the Shubert, Keith, the Family and the Grand theatres.

We previously sold our pictures in Cincinnati to a gentleman by the name of Libson, who was an independent exhibitor. A number of years ago he made a deal with RKO for an interest in the theatres and continued to operate (1058)

them for them. During all that time we have done business with the same theatres, first when he operated them as an independent, secondly when he operated them for RKO.

Q. Columbus, Ohio. A. In Columbus, Ohio, we sell our pictures to Loew's there in their State, Stillman and Ohio theatres. These theatres were previously—wait, I am wrong. In Columbus, Ohio, the names of the theatres are the Ohio and the Broad. Those theatres were formerly operated by a gentleman by the name of Billy James, an independent exhibitor, and we did business with him until such time as he disposed of his theatres to Loew's, and then we continued to sell our pictures to Loew's in the same theatres in which they had been exhibited prior to the time they took over their operation.

Charles M. Reagan—By Defendant—Direct

Q. Will you give us the next city on your list? A. You skipped Cleveland. In Cleveland we sell our pictures to Loew's, who operate the State, Stillman and Ohio theatres. The reason for selling Loew's there is because they have the biggest theatre in town, the State; they have two very fine theatres in the Stillman and the Ohio. We feel we get fine representation for Paramount pictures in those theatres.

Q. Denver, Colorado. A. No, the next is Dayton.

Q. Dayton, I am sorry. A. In Dayton we sell our pictures (1059)

to RKO, who operate the Keith, Colonial, and State theatres. These theatres were also operated by Mr. Libson prior to the time of the sale of his interest to RKO, and when they were operated by him we did business with him, and when he sold his interest to RKO and operated for them, we continued to do business with him for the RKO interests.

Q. Denver, Colorado. A. In Denver, Colorado, we do business with the Denham theatre.

Q. Is the Denham an independently operated theatre?

A. That is an independently operated theatre, operated by a gentleman who in my opinion is one of the best showmen in America.

Q. Are there theatres in which other defendants have an interest? A. There are.

Q. Which exhibit first-run in Denver? A. There are.

Q. Why do you sell or license your product first-run to the Denham? A. Well, originally Paramount operated the Denver and the Paramount theatres in Denver. During our bankruptcy we lost those theatres. Their operation was taken over by a gentleman who was operating one of the other theatres there at the time, the Aladdin. The terms he offered us for our pictures were such that we were unwilling to accept them. The Denham Theatre was then operating on a legitimate policy. Mr. Cochrell, who is the exhibitor

Charles M. Reagan—By Defendant—Direct

(1060)

presently operating it, went in and took it over. We started to do business with him and we have done business ever since, and he is one of the most satisfactory accounts we have, in addition to which the revenue that we earn from that theatre is very fine.

Q. That is not the largest theatre in Denver? A. It is not the largest theatre but in my opinion, by a wide margin, is the best operated, in addition to which we get longer runs there than we would get or we could get if we played our pictures in the other theatres, and by virtue of the longer run we get as much film rental as—

Q. That is an example of what you stated this morning where you might take a smaller theatre but because of the showmanship and skill of the operator, you believe it would be a better account for you, is that right? A. That is it.

Q. How about Elizabeth, New Jersey. A. In Elizabeth, New Jersey, we sell our pictures to Warner and Skouras.

Q. Erie, Pennsylvania. A. In Erie, Pennsylvania, we sell to Warner Bros. They have the biggest theatre there, the best.

Q. Fall River, Massachusetts. A. In Fall River, Massachusetts, we sell Yamins.

Q. Is he an independent operator? A. He is an independent exhibitor, yes.

(1061)

Q. For Wayne, Indiana. A. In Fort Wayne, Indiana, we sell our pictures to the Harrison Theatre and Realty Company. They operate all of the first-run theatres in the town with the exception of one, a very small one, which has a seating capacity of 575.

Q. That operator is an independent exhibitor? A. That is correct.

Q. Indianapolis. A. In Indianapolis, we sell our pictures to the Greater Indianapolis Theatres, which is an in-

Charles M. Reagan—By Defendant—Direct

dependent operation, operating the Circle and the Indiana and Lyric theatres. The Indiana is the largest theatre in town, the Circle is next to the largest; the Lyric is a Move-over house.

Q. The defendant Loew has a theatre there, first-run theatre, has it not? A. Yes, sir.

Mr. Davis: Best theatre in town?

The Witness: I don't think so.

Q. But you sold the independent competitor of Loew's?

A. I sold these theatres in Indianapolis before Loew came in to the town, and have continued to sell them since.

Q. The Lyric, which is one of the theatres that you license there, is an independently operated move-over house, is it not? A. That is correct.

Q. And that is an example of your licensing for move-over to independent exhibitors? A. We license move-overs (1062) to anyone.

Q. Jersey City. A. In Jersey City, we divide our pictures between Warner Bros. theatre, the Stanley, and Skouras, who operates the State. The Stanley is the largest theatre in town by about a thousand seats. The State is the fourth largest.

Q. Kansas City, Kansas. A. In Kansas City, Kansas, we sell our pictures—license our pictures to the Electric Theatre, which is an independently operated theatre and the largest in Kansas City, Kansas.

Mr. Caskey: May I interrupt there just a moment. The Electric is the theatre that Mr. Rodgers testified about as possibly having some connection with the National subsidiary in Kansas City, Kansas. You know it to be independently operated?

The Witness: It is operated by the Rubel interests, and a gentleman by the name of Baker operates

Charles M. Reagan—By Defendant—Direct

it, been operating it for a number of years. It has no connection with National Theatres at all.

Q. Does the defendant Twentieth Century-Fox have an interest in a theatre in that city? A. They have an interest and operate the Granada Theatre in the same city.

Q. But you license the Electric? A. Yes.

Q. Long Beach, California. A. In Long Beach, California we license our pictures to the Fox Westcoast, who (1063)

operate the West Coast, United Artists, Imperial and Long Beach. The two best theatres in town are the West Coast and the United Artists. That is where we try to play all our pictures that we can.

Q. Louisville, Kentucky. A. Louisville, Kentucky, we license pictures to the Rialto and Strand Theatres, which are operated by the Fourth Avenue Amusement Company, an independent exhibitor.

Q. Does the defendant Loew have a theatre in Louisville? A. Yes, sir, they do.

Q. But you license to the independent? A. I do, because I am sure in the case of Louisville that the Fourth Avenue Amusement Company, on the Rialto Theatre, gross more money than Loew's does, and I get more film rental out of it.

Q. Milwaukee, Wisconsin. A. In Milwaukee we are presently licensing our pictures between the Wisconsin, the Palace and the Strand theatres, all of which are operated by Fox-Wisconsin Amusement Enterprises. Prior to the time that the Palace was leased to the Fox-Wisconsin Amusement Corporation, we licensed our pictures in the Palace, which was then operated by an independent exhibitor.

Q. Nashville, Tennessee. A. In Nashville, Tennessee, we license our pictures in the Paramount and Princess Theatres, (1064)

which are the two largest in town, operated by the Crescent Amusement Company.

Charles M. Reagan—By Defendant—Direct

Q. Is that an independent operator? A. That is.

Q. Does the defendant Loew's have a theatre there? A. They do have.

Q. Norfolk, Virginia. A. In Norfolk, Virginia, we license our pictures to Fabian Theatres. Used to be operated by Wilmer & Vincent. We licensed to Wilmer & Vincent when they were operating them, and when Fabian took them over we continued to do business with them. That is the Norva and Granby Theatres.

Q. The defendant Loew's has a theatre there? A. They have, that is correct.

Q. You license the independent. A. We do and have been for as long as I know.

Q. Oakland, California. A. In Oakland, California, we license our pictures to Fox Westcoast. They operate the Fox, which is by far the finest theatre in the city of Oakland. As a matter of fact, it is one of the finest theatres in the United States. They also operate the Paramount, which is the next best theatre in town. They operate the Orpheum and they operate the Grand Lake. We license our pictures in Oakland to Fox Westcoast because they operate the best theatres in town and the biggest theatres in town, and I am sure also we get a better film rental return from them than if we sold them to anyone else.

(1065)

Q. Could you tell by your general familiarity with conditions there, knowing these theatres that you do license first-run, that the Blumenfeld theatres would not be able to pay as good revenue, without negotiating with Blumenfeld? A. You bet I could.

Q. How could you tell that? A. Well, the Fox Theatre seats 3,300 people; the Paramount seats 3,400 people; the Orpheum seats 2,500 people, and the Grand Lake seats 2,200 people. The theatres operated by Blumenfeld seat 1,075, 1,300 and 2,800.

Charles M. Reagan—By Defendant—Direct

There are no finer theatres in America than the Fox and Paramount theatres in Oakland. They are magnificent buildings, magnificently built and constructed and Blumenfeld's theatres cannot compete by way of gross with either the Fox or the Paramount, I am sure.

Q. Philadelphia. A. In Philadelphia we license our pictures to Warner Bros., who operate the Aldine, the Boyd, the Capitol, the Earle, the Fox, the Mastbaum, the Stanton and the Stanley.

Q. Pittsburgh. A. In Pittsburgh we license our pictures to Warner Bros.—we split between Warner Bros. and Loew's. Part of them play the Warner Bros. Stanley, Warner or Ritz theatres.

Q. Portland, Oregon? A. In Portland, Oregon, we license (1066) our pictures to the Hamrick-Evergreen Circuit who operate the Paramount, Orpheum, Oriental, Playhouse and Music Box theatres. Prior to the time that Paramount was leased to Hamrick-Evergreen, we sold our pictures to this theatre when it was operated as a Paramount theatre by one of the Paramount affiliates or subsidiaries. We lost it in the bankruptcy and we have been doing business since that time with Hamrick.

Q. Providence, Rhode Island? A. We sell our pictures in Providence to the Strand Theatre, which is operated by a gentleman by the name of Silverman. We have been doing business with Mr. Silverman for, well, ever since he has had the theatre, 20 years or more.

Q. Is he an independent exhibitor? A. He is.

Q. Does the defendant Loew have a theatre in Providence? A. They do.

Q. Does the defendant RKO have a theatre in Providence. A. They do.

Q. Reading, Pa. A. In Reading, Pa. we sell—license our pictures to Fabian, that is, in the Embassy and Ritz Theatres.

Charles M. Reagan—By Defendant—Direct

These theatres were formerly operated by Wilmer & Vincent, an independent exhibitor, or exhibitors, and when they were operated by them we also licensed our pictures to those houses.

Q. Is Fabian an independent? A. He is.
(1067)

Q. Does the defendant Warner Bros. have a theatre there? A. They do.

Q. Does Loew's have a theatre there? A. They do.

Q. Richmond, Virginia. A. In Richmond, Virginia, we license our pictures to the National and Colonial Theatres which are operated by Fabian Theatres, previously having been operated by Wilmer & Vincent. We licensed our pictures to Wilmer & Vincent when they operated the houses and have continued that since Fabian took them over.

Q. Does the defendant Loew have any theatre there? A. They do have.

Q. St. Louis, Missouri. A. In St. Louis we license our pictures to Fanchon & Marco. They operate the Ambassador, the Fox, Missouri, the St. Louis and the Shubert theatres.

Q. Is Fanchon & Marco an independent? A. They are.

Q. Does the defendant Loew have theatres in St. Louis? A. They do have.

Q. First-run theatres? A. They do have.

Q. Sacramento, California. A. In Sacramento we license our pictures to Fox West Coast, who operate the Senator, the Alhambra and the Capitol theatres, best theatres in town.

Q. San Diego. A. In San Diego we license our pictures to Fox West Coast, who operate the Fox, the State, the
(1068)

California, the Adams, the Orpheum and the Mission.

Q. Seattle. A. In Seattle we license our pictures to Evergreen Theatres Corporation, who operate the Fifth Avenue, the Paramount, the Music Hall, Orpheum, the Blue Mouse and the Music Box.

Charles M. Reagan—By Defendant—Direct

Q. Evergreen is a company in which Fox has some interest? A. They do have, yes.

Q. Spokane. A. Spokane, we license our pictures in Spokane to Evergreen Theatres Corporation also. They operate the Fox, Orpheum and the State theatres.

Q. Syracuse. A. In Syracuse we license our pictures to RKO, who operate the Paramount, the Eckel and the Empire.

Q. Tacoma, Washington. A. In Tacoma we license our pictures to Mrs. H. T. Moore and Mr. J. Ousley, who operate the Rialto Theatre.

Q. Are they independent? A. They are independent, yes. We used to sell Mr. Moore before he died and since his death we have continued to sell his widow.

Q. Trenton, New Jersey. A. In Trenton we license our pictures to RKO, who operate the Lincoln, Capitol, State, Trent and Palace.

Q. Tulsa. A. In Tulsa we license our pictures to Ralph Talbot, who operates the Ritz, the Orpheum, Majestic and Rialto theatres.

(1069)

Q. Utica. A. In Utica we license our pictures to Warner Bros., who operate the Stanley and the Avon theatres.

Q. In Washington, D. C. A. In Washington, D. C. we divide our pictures between Warner's and Loew's.

Q. Wichita, Kansas. A. In Wichita we license our pictures to Fox Midwest, who operate the Miller, the Orpheum, the Palace, the Wichita, the Sandra and Boulevard.

Q. Wilmington, Delaware. A. We license our pictures to Warner Bros. in Wilmington, who operate the Queen, the Warner and the Grand Opera House.

Q. Youngstown, Ohio. A. In Youngstown we license our pictures to the Palace Theatre. It is operated by Mr. Ed Printzsen.

Q. Is he an independent operator? A. He is.

Q. Is there a Warner Theatre in Youngstown? A. Yes, sir, there is.

Charles M. Reagan—By Defendant—Direct

Q. Speaking generally, do you consider these first-run customers that you have mentioned to have the best theatres or theatres comparable with the best in the several cities involved? A. I do.

Q. And do you consider them in each case the best outlet for Paramount pictures first-run? A. Yes, sir, I do.

Q. Is your choice of which outlet to license first-run determined or influenced by the question of whether any (1070)

defendant in this case has an interest in it? A. Has nothing to do with it.

Q. In all these cities are there also a number of other theatres in addition to the first-run theatres? A. Yes, there are.

Q. And are all the theatres in the town in competition, or in the city in competition? A. They are.

Q. And in most of these cities are there other first-run theatres which are in competition with the theatres showing Paramount pictures first-run? A. There are.

Q. Dealing with the theatres in cities with populations under 100,000, would you say generally that the theatre selected by Paramount for exhibition first-run was considered by it to be the best outlet for Paramount pictures? A. I would.

Q. And generally would you say that that theatre was the best theatre or comparable with the best in that city? A. Well, it is either the best or comparable with the best or the best that we could do.

Q. In any of those cities of any size, leaving aside theatres in which Paramount itself had an interest, was the theatre selected as the first-run outlet because any defendant had any interest in it? A. No, sir, they were not.

Judge Goddard: In any theatre owned by Para- (1071)

mount, average theatre in a large city, how many pictures are used a year?

Colloquy

The Witness: In a theatre owned by Paramount?

Judge Goddard: Yes; take any one of the large cities, what is the average number of pictures?

The Witness: Well, it may run—it depends on the size of the city.

Judge Goddard: Take Oakland, California, which you have just been describing, those are—

The Witness: Those are operated by Fox West Coast.

Judge Goddard: Take a city where Paramount operates.

The Witness: Say Detroit?

Judge Goddard: All right.

The Witness: The United Artists theatre there is operated by—

Judge Goddard: No, in a theatre, how many pictures do you run in a year?

The Witness: In one theatre?

Judge Goddard: In one theatre.

The Witness: In the Michigan Theatre I should say 40 pictures.

Judge Goddard: 40 pictures, and of those 40 how many are made by Paramount?

The Witness: Probably 20.

(1072)

Judge Goddard: Who produces the others, any one company or, if not one company, how do you select the pictures?

The Witness: I don't know how they select the pictures that are used outside of our own. That I have nothing to do with.

Mr. Seymour: I will have a witness, Judge Goddard.

Judge Goddard: You see what I am getting at?

Mr. Seymour: I will have a witness who can answer that question, yes.

Colloquy

Judge Bright: Are these 92 cities about which you have just been talking the same 92 that the Government picked out?

Mr. Seymour: Yes, they are just selected on the basis of population.

Judge Bright: Your tabulation does not agree with the Government's, does it, on any particular theatres in which you play Paramount pictures?

Mr. Seymour: I think so, because what the Government did was to take 73 cities out of the 92.

Judge Bright: I have been watching this tabulation in the Government's brief and it does not check at all with some of this testimony.

Mr. Seymour: Well, I have not compared it precisely. We were on the same 92 cities but the Government has limited itself to 73 selected cities. Some (1073)

of my cities, obviously, are not in the Government tabulation because they aren't within the tabulation.

Judge Bright: Some of the cities which you mentioned, which are in the Government's tabulation, do not show the same outlets for Paramount pictures first-run.

Mr. Seymour: I am sorry to say I have not compared them but I will.

Judge Bright: I have been watching it as we go along. There were a number of instances where I found there was a difference.

Mr. Semour: My own preference as to who is probably right about it is the man who is in charge of distributing.

Judge Bright: I didn't ask you that.

Mr. Seymour: No. I will make a check. I haven't followed it, I am sorry to say. I was examining from a different list and I haven't personally checked the

Colloquy

two, but if we can throw any light on corrections, we would like to do it, as I am sure Mr. Wright would like to do.

Judge Bright: I was wondering whether you were giving your testimony as of a different date. The Government is the 1943-44 season. I did not know whether you were questioning at the same season.

Mr. Seymour: My own is current but the information ought not to differ.

(1074)

Mr. Davis: I should like to ask whether I am mistaken in thinking that Government tabulation contained in their trial brief has never yet been offered in evidence in this case.

Judge Bright: I just referred to it. I read it like I did the other.

Mr. Wright: If the Court please, the tabulation is merely a summary of the data contained in the admissions of fact which are in evidence and which each of these defendants undertook to state. It is first-run outlets for the 1943-44 season. That material is in evidence. I think that your Honor may be confused by the fact that the outlet here in the tabulation merely shows the name of the distributor who is affiliated with the particular exhibitor who has the first-run account. There may be a different name for the exhibitor.

Judge Bright: In some—

Mr. Wright: Which would not appear here.

Judge Bright: In some instances you put down one of the defendants when this gentleman testifies that his outlet is an independent theatre.

Mr. Wright: Could you—

Judge Bright: I did not mark it, but there were half a dozen at least.

Colloquy

(1075) Mr. Wright: They should be the same except in

so far as a change may have been made as of now and the 1943-44 season.

Mr. Davis: I think we are prepared to say, if the Court please, that even if there is no conflict, and there is some conflict between the testimony and the summary, the testimony itself amplified and added to the summary. Your Honors may recall that in opening the case I called attention to the statement about New York in that summary, which said the Loew's in New York divided their product between themselves, Paramount and an independent, and I pointed out what has since been shown by testimony, that the so-called allocation to Paramount consisted of one single film sold during a period of some ten years, and I argued then, and we shall at a later time argue again, that the Government's summary is both inaccurate and, by reason of its generality, misleading.

Mr. Seymour: Now, Mr. Wright, in order to give you an opportunity to cross-examine Mr. Reagan while his testimony is fresh in your mind, I suggest that we stipulate as we did yesterday, that if I put to Mr. Reagan the questions negating conspiracy, which I did put to Mr. Zuor yesterday, he would answer in the negative and that that stipulation shall have the same force and effect as if he so testified.

Mr. Wright: Entirely agreeable.

Mr. Seymour: You may examine.

(1076)

Mr. Caskey: I have a few questions.

Mr. Seymour: Oh, wait a minute, Mr. Caskey wants to examine first.

Charles M. Reagan—By Defendant—Cross

Cross-Examination by Mr. Caskey:

Q. Mr. Reagan, are you familiar with Kansas City, Missouri? A. Yes, sir.

Q. Theatres in Kansas City, Missouri? A. Yes, sir, I am.

Q. Your first-run is licensed to which theatre? A. Paramount's first-run?

Q. Yes. A. To the Newman Theatre.

Q. That is operated by whom? A. Paramount.

Q. Second-run is licensed to whom? A. I don't recall the name of the theatre.

Q. The Plaza Theatre? A. Yes; that is correct.

Q. Do you know the Plaza Theatre? A. Yes, sir.

Q. What kind of a theatre is it? A. It is a fine theatre in the neighborhood section of Kansas City, the Plaza section.

Q. And adjacent to a large number of private residence and apartment houses? A. That is correct.

Q. Now, you recently produced a picture entitled "Going My Way", did you not? A. Yes, sir.

Q. And you played it first-run at the Newman Theatre? A. Yes, sir.

Q. When did the operator of the Plaza Theatre know (1077)

when it could play that picture? A. After it had completed its engagement at the Newman Theatre.

Q. The picture played a week at the Newman Theatre. When was it decided to play it for a second week? A. When?

Q. Yes. A. Well, when that picture started to play at the Newman Theatre they knew they were going to play it for more than one week.

Q. All right. But what I am getting at is, is it not a fact that in a theatre like the Newman the decision to extend the run is made each week, depending upon the success of the picture? A. Depending upon the gross that the picture does.

Charles M. Reagan—By Defendant—Cross

Q. And a picture may run two weeks, three weeks, four weeks, or five weeks, or, in the case of "Going My Way" six weeks; is that right? A. That is correct.

Q. And until it has completed its engagement its availability to the second-run theatre cannot be determined? A. That is correct.

Q. And that is true whether the second run operator is a subsidiary of National Theatres or is an individual? A. That is correct.

Q. It is no different in Kansas City than any place else? A. No, sir.

Q. Now, do you consider that the Plaza Theatre is in (1078)

competition with the Newman Theatre? A. Yes, sir.

Q. It is a fact, is it not, that a great many people went to the Plaza Theatre to see "Going My Way"? A. Yes, sir.

Q. Even though you had exhorted them to come downtown to the Newman Theatre to see it there? A. That is right.

Q. Now, I want to ask you a question about the exploitation of pictures in connection with the testimony you gave as to selling pictures to the highest bidder: Are you familiar with the Fifth Avenue Theatre in Seattle? A. Yes, sir, I am.

Q. What kind of a theatre is it? A. It is a fine theatre, well located.

Q. How is it operated? A. Well operated.

Q. Do you know the Fox Theatre in Spokane? A. I do.

Q. What kind of a theatre is that? A. A fine theatre.

Q. How is it operated? A. Well operated.

Q. They are both operated by subsidiaries of Evergreen?

A. That is correct.

Q. And those are the two largest theatres in the State of Washington, are they not? A. That is correct.

Q. Now, tell the Court what effect, if any, the exploitation, advertising and handling of your pictures in those two

Charles M. Reagan—By Defendant—Cross.

theatres have upon your revenue from the picture from your other accounts in the State of Washington? A. Well, (1079)

it enhances our revenue or improves our revenue any time we can play a picture in the Fifth Avenue Theatres in Seattle and the Fox Theatre in Spokane, because if the picture can play in those houses it has established the picture in the surrounding territory.

Q. And it is of benefit to you to play "Duffy's Tavern" in the Fifth Avenue Theatre in the revenue that you will receive from Wenatchee? A. That is correct.

Q. Now, I asked Mr. Rodgers yesterday a series of questions regarding this theory of cross conditioning of licenses, and I should like to shorten it as much as I can, but I want to ask you the question: With whom do you deal—

Mr. Wright: I will stipulate that he will give the same answers.

Mr. Caskey: You will stipulate that if the same questions were put to Mr. Reagan in regard to the licensing of Paramount pictures and the fact of non-conditioning, he would testify in similar manner?

Mr. Wright: Yes.

Q: That is true, is it not, Mr. Reagan?

Judge Bright: What is true?

Mr. Caskey: That there is no conditioning one on the other?

A. There is not, no, sir.

Mr. Caskey: I accept the stipulation.

Mr. Proskauer: Can't we have it understood that (1080)

that answer of Mr. Reagan applies to all the co-defendants?

You did not condition your licensing of pictures to any defendant on whether they licensed to you?

Charles M. Reagan—By Defendant—Cross

The Witness: We did not, no, sir.

Mr. Caskey: One other question, Mr. Reagan.

By Mr. Caskey:

Q. Do you know what the clearance between the Newman Theatre and the Plaza Theatre in Kansas City is? A. I believe it is 28 days, although I am not certain.

Mr. Caskey: That is all.

Mr. Seymour: Anybody else?

(No response.)

Mr. Seymour: Mr. Wright, the witness is yours.

Cross-Examination by Mr. Wright:

Q. You are familiar, are you, Mr. Reagan, with the agreement that has been put in evidence here as Government's Exhibit 243, an exchange of letters between Mr. Moskowitz and yourself regarding the terms under which Paramount pictures were played in the Loew Metropolitan Circuit here? A. No, sir, I am not.

Q. You had better take a look at it (handing exhibit to witness). A. Yes?

Q. Now, this series of documents that have been marked as 243 have been identified as the agreement under which your 1943-1944 pictures were exhibited in the Loew New (1081)

York Circuit. That is correct, isn't it? A. Yes, sir.

Q. Now, I shall call your attention to the date—or I will ask you to read it to the Court so they can understand what the agreement says there, calling the date to their attention. A. It is dated May 17, 1945. (Reading):

"The following confirms the settlement agreed upon between us.

Colloquy

"For the Circuit"—

Mr. Seymour: What kind of procedure is this, Mr. Wright? If you have got a document that you want to offer, offer it.

Mr. Wright: The document is in evidence. I propose to examine him on it.

Mr. Davis: What is the document, Mr. Wright?

Mr. Wright: Exhibit 243 in evidence.

Mr. Seymour: And I think it might be easier for you to read it.

Q. Go ahead, Mr. Reagan. A. (Continuing reading):

"Season 1940-1941, as per contracts in existence with the three lowest grossing pictures on the long-half as the reversion pictures.

"Seasons 1941-1942, 1942-1943 and 1943-1944, the long-half film rentals are settled on the following formula:

(1082)

"Combination of two pictures starting at 30% for the two pictures and graduating up allowing the Exhibitor 25% of the film rental as profit at all times until the Distributor has 40% of the gross as film rental, the balance of the gross divided 50% to the Distributor and 50% to the Exhibitor.

Where the second feature is that of another Distributor, the same method was used and then the actual cost of the second feature deducted from the total film rental, except for TWO YANKS IN TRINIDAD, SINTOWN, BEAUTIFUL BUT BROKE, where the costs used are amounts agreed upon between us, the balance being Paramount film rental.

Where Screeno and Vaudeville were involved, the costs of these items were deducted from the gross be-

Colloquy

fore computing the film rental. In the instances of Equal Billing Shows, these were computed as agreed upon and are shown on various schedules rendered.

In the instance of any 'B' picture played with some other company's 'A' picture, agreed film rental is \$20,000, less \$100.00 for the Century Theatre and
(1083)

\$300.00 for the Ziegfeld Theatre, if played after these theatres were closed. 'C' Pictures—\$8,000.00 except those played after the Century Theatre closed in which \$50.00 was deducted for each picture.

State Theatre—Season 1940-1941, as per contract in existence. Seasons 1941-1942, 1942-1943 and 1943-1944 figured on the following basis: Twenty-five per cent of the receipts after deducting the actual cost of the stage show, stage hands and musicians until such time as the Exhibitor has 50% of the film rental as profit, the balance of the gross divided 50% to the Distributor and 50% to the Exhibitor. If, however, at 25% the Exhibitor does not get 50% of the film rental as profit, in that case it reverts down to a point where the Exhibitor has 50% of the film rental as profit, but in no event does the Distributor receive less than 20% as film rental.

Embassy Theatre—Season 1942-1943, at the agreed figure—\$5,783.42.

Advertising—Reimbursement of \$19,397.22 for extra advertising.

By the foregoing, settlement is made for all prior years to and including 1943-1944, it being understood however, that as to the years 1942-1943 and 1943-1944, the settlement is subject to your approval of the figures submitted for those two years.
(1084)

The summary sheet covering the four years is attached hereto.

Charles M. Reagan—By Defendant—Cross

"Upon receipt of your confirmation of this letter, we will promptly forward check for the amount due you."

Judge Bright: What does all that mean?

Mr. Wright: That is what I want to examine the witness on.

Mr. Seymour: It obviously means a settlement of a controversy. I do not see what it has got to do with this case.

By Mr. Wright:

Q. The date of that letter is May 1945, is it not? A. Yes, sir.

Q. So that it was not until 1945 that you had reached any final determination with the Loew's organization as to the terms on which they had been playing your pictures in the Metropolitan Circuit, or for a four-year period, is that right? A. For the years mentioned, that is correct.

Q. And as to that 1943-1944 season, you had been continuously negotiating with them about the playing of those pictures in the circuit for how long?

Mr. Proskauer: Your Honor, I object to that question as incompetent, and for this reason: he imports into it the concept that there has been no prior agreement about playing pictures. If you will look at this

(1085)

correspondence, anybody looking at it will know that a controversy had arisen as to some prior agreements, and that they were settling the controversy; and yet these questions are framed in such a way as to give the impression to the Court that this was the first time they had ever agreed on anything.

Judge Hand: I will overrule your objection. Let him answer if he can.

Charles M. Reagan—By Defendant—Cross

Mr. Wright: Will you read the question?

(Question read.)

A. There had been a dispute with Loew about the terms under which they would play Paramount pictures. When I took over my present position—

Judge Goddard: Could you sit back and speak up so we can hear better?

The Witness: Pardon me.

A. (Continued) When I took over my present position in May of 1944, I found that the agreement had not been completed because the question of expense figures were involved, and the audit which our company was making of the expense figures submitted by Loew was not finished for a long period of time. I think it took them about a year and a half to complete the audit.

By Judge Hand:

Q. Whose pictures were being played? A. Paramount (1086) pictures in the Loew houses.

Q. All right. They were played under some thing which purported to be a contract, were they not? A. For the season 1940-1941, a contract had been completed and agreed upon, and for the succeeding seasons I don't know— I think in one instance a contract was signed but it was subject to a review after the audit was finished, or to final settlement, rather. This was a very involved situation in so far as I was concerned. I not only had to make the deal for the current season's product, but I had to settle the deals that were incomplete because of the prior seasons because the audit had not been finished.

Charles M. Reagan—By Defendant—Cross

By Mr. Wright:

Q. My question called your attention specifically, Mr. Reagan, to the 1943-1944 season. Now, it is the fact, is it not, that prior to the date of that letter there was no written agreement of any kind between you and Loew with respect to those 1943-1944 pictures? A. I can't answer that without checking my files, Mr. Wright.

Q. Well, I had previously asked you if that exhibit contained the agreement which was made with respect to those pictures. Now, are there any other documents or aren't there which are part of it? A. I do not believe there are.

Q. Well, then, the answer to my question, the previous question, is Yes, isn't it; there was no prior agreement in (1087)

writing? A. For 1943-1944?

Q. Yes. A. I don't believe there was.

Q. And those pictures for the 1943-1944 season began to be released when? A. To Loew's probably about the first of 1944.

Q. I mean released generally, for general exhibition? A. In October of 1943.

Q. And then they were played here in New York as they were released by your Paramount Theatre first-run? A. Yes, sir.

Q. And then they were held up in so far as any further exhibition in New York was concerned during the time of these negotiations, isn't that correct? A. Yes, sir; we were negotiating continuously and we did not release the pictures to the succeeding runs during the period of our negotiations.

Q. So from the period of September, 1943, until May, 1943, none of your 1943-1944 releases were made available for exhibition to any subsequent-run exhibitor in the New York Metropolitan area, is that right? A. No, I do not think that is correct, Mr. Wright. You say from the period of

Charles M. Reagan—By Defendant—Cross

September, 1943, until March of 1945, none of the pictures were played in the Loew Theatres, or were they made available to any of the subsequent-run theatres?

Judge Hand: And then what? What is your argument?

(1088)

Mr. Wright: I am simply pointing out that without any written agreement at all the relationships between Paramount and Loew are such that the entire availability of pictures to other exhibitors in the area is entirely dependent on Loew's and Paramount's negotiations with each other, and that until such time as they see fit to get together a deal, the entire distribution of the films in the area is blocked, and is controlled by them.

Judge Hand: Are you claiming now that there was a particular conspiracy between Paramount and Loew that did not involve the other people?

Mr. Wright: Oh, if the Court please, in each particular—

Judge Hand: How can they tie up all the other people because of this kind of a pre-existing conspiracy?

Mr. Wright: I just wanted to show that it is implicit in the nature of the prior-run arrangement that they make with each other that where there is a delay of this kind, or one of them does not choose to exhibit the pictures in their theatres, they simply do not become available to competitors; that by their agreements they actively and effectively control the entire subsequent exhibition of the film in the area; and that that control is arbitrarily exercised.

Judge Hand: We will now adjourn until tomorrow morning at 10.30.

(Adjourned to October 25, 1945, at 10.30 a.m.)

Charles M. Reagan—By Defendant—Cross

(1089)

New York, October 25, 1945;
10.30 o'clock a. m.

Trial resumed.

CHARLES M. REAGAN, resumed the stand.

Cross Examination Continued by Mr. Wright:

Q. Mr. Reagan, you testified yesterday with reference to this Loew agreement marked in evidence as Exhibit 243. After that agreement was signed, then the 1943-44 pictures began to play in the Loew or Metropolitan Circuit here?

A. No, sir. What is the date of the agreement?

Q. May 17, 1945. A. The 1943-44 season's pictures, the play-off was completed in February of 1945.

Q. When did the play-off of the 1943-44 pictures begin?

A. I cannot give you the first date but I would assume along in October or November of 1943.

Q. In the Loew Circuit? A. Yes, sir.

Q. As of that time, while they were playing off, there then was no written agreement covering the terms on which they played at all, is that right? A. No, sir, there was no written agreement for the reason that the audit of the expense figures had not been completed and we therefore could

(1090)
not complete our agreement until after the audit had been finished.

Q. And the terms of the agreement as finally reflected in these attached sheets were simply that you got so much playing time in the Loew Circuit here in exchange for a share of the profits of the Loew theatres in exhibiting the pictures, isn't that right?

Mr. Seymour: I must object to that as wholly argumentative.

Charles M. Reagan—By Defendant—Cross

Judge Hand: Let me hear the question.

Q. (Read.)

Mr. Seymour: Your Honors will recall that when I asked whether there was any profit-sharing, Mr. Wright objected to it. He is trying to interpret the arrangement.

Judge Hand: His objections were addressed to questions of yours which called for very sweeping conclusions. This is pretty well limited to a particular thing. I will allow it.

Mr. Proskauer: Your Honor, may I suggest that the vice in that question is the use of the words "profits of the theatres." The exact method of compensation is defined in the agreement and it was profit on the exhibition of certain pictures, not of the theatres. There wasn't any pooling, as I read those agreements.

Judge Hand: That is a matter of argument.

(1091)

Mr. Wright: The question is—

Judge Hand: Go on, go on.

Q. Will you answer the question? A. Will you read the question?

Q. (Read). A. No, sir.

Q. I call your attention to this first column on the sheet, which lists the names of the features, is that right, that are licensed? A. Yes, sir.

Q. And the next column with the words "Number of Tenth's" underneath it, what does that indicate? A. That is playing time.

Q. The number of tenths assigned after the name of each feature then represents the total playing time that was assigned to each feature in the circuit, is that right? A. That

Charles M. Reagan—By Defendant—Cross

is the amount of playing time that we were successful in obtaining on each of the pictures, yes, sir.

Q. Then the next column is headed "Gross Receipts." That represents gross receipts of the circuit in exhibiting this particular picture? A. Yes, sir, that is correct.

Q. Then the next column "Vaudeville Deduction," that represents the expenses of—a deduction for such expenses as were incurred in showing vaudeville in connection with the features? A. That is correct.

Q. The next column is headed—

(1092)

Judge Goddard: Mr. Wright, I have difficulty in hearing you over here. Will you bear that in mind, please?

Mr. Wright: I shall speak louder.

Q. Then the next column headed "Net Receipts" represents the gross less the vaudeville deductions? A. That is correct.

Q. And the next column entitled "House Expense", that represents the actual operating expenses of the circuit in playing the picture, is that correct? A. That is correct.

Q. Then the film rental, that represents what? A. That is the film rental that we received based upon the terms for which we had sold our pictures.

Q. And those terms are the terms set forth in the letter agreement here which describes the computation of the film rental as an amount which enables the exhibitor to earn a certain profit, is that correct? A. It enables the exhibitor to earn a certain profit to a point where we then get an increased percentage of the gross for film rental.

Q. And then your next column after "Film Rental" is headed "Tax." What does that mean? A. That is City of New York tax.

Charles M. Reagan—By Defendant—Cross

Q. Is that an allocated portion of the taxes imposed by (1093) the City on the theatres? A. That is, I believe, the gross sales tax.

Q. Imposed on the film rental? A. I am not sure whether it is on the film rental or whether it is on the admission.

Q. Well, you don't know whether you are referring to a tax on admissions there or on film rentals? A. No, sir, I don't know which that is.

Q. Well, in either event the figure opposite the picture is the amount of the tax allocated to the particular picture in the circuit's theatre? A. It is the amount of the tax that has to be paid on the particular picture, yes, sir.

Q. Then this next column headed "P. & L." What is that? A. That is the profit or loss that Loew made on each of the pictures that were licensed to them.

Q. And then the column headed "Percentage of Combined Film Rental as Profit." That means what? A. That shows the profit that they made.

Q. And then your next column headed "Percentage of Film Rental to Gross"? A. That shows the film rental that we earned based upon the deal that we made.

Q. And the "Cost of Second Feature"—what is in that column? A. That is what the cost of the second feature amounted to.

Q. That was where they played a double bill, and that (1094)

was what was paid for the second feature, and that was deducted from the film rental, is that right? A. Yes, that is right.

Q. Now, when you make a deal with an independent exhibitor—first, tell us how you use the term "independent exhibitor"? A. Independent exhibitor is an exhibitor who is not affiliated with any of the defendants in this case nor affiliated with any of the companies who produce and distribute pictures.

Charles M. Reagan—By Defendant—Cross

Q. Now, the average independent exhibitor is an operator of a few theatres, one to we will say four or five? A. Yes, sir.

Q. And in dealing with that exhibitor you deal with him on your standard form of contract which requires him to play the pictures licensed in a particular theatre at a particular time, isn't that correct? A. In a particular—well, it may be one theatre or two theatres. There may be a choice of theatres in which you can play the pictures.

Q. But ordinarily your agreement will provide the particular time that the film plays and the theatre in which it plays, is that right? A. Yes.

Q. And the admission price at which it will play? A. Yes, that is correct.

Q. And in connection with this agreement which I just handed you, Exhibit 243, there are no restrictions in that agreement as to what admission price Loew would charge in any theatre in that circuit, is there? A. There were no admission prices included in the agreement, because we assumed and knew they would be the same as they had been charging at the time the last contracts were signed.

Q. I didn't ask you why. I just asked you what the fact was. If you will just confine your answer to the question it will go faster. Now, there was also no requirement that Loew play any one of these pictures that are named here in any particular theatre in the circuit at any particular time, is that right? A. At the time the bookings were submitted we then considered whether the playing time was satisfactory and whether the list of theatres in which they wanted to play the pictures met with our approval.

Q. So that you just arranged the play dates as a matter of booking convenience between your booker and their booker, is that right? A. Oh, no, sir. We argued about the playing time and the theatres in which the pictures would play.

Charles M. Reagan—By Defendant—Cross

Q. In any event, all of the theatres in the circuit played those pictures before they were exhibited by any independent exhibitors who were operating theatres in opposition to any of the Loew theatres, isn't that right? A. They played them (1096)

prior to the time that the theatres over which they had clearance played them, yes, sir.

Q. Well, there is not any clearance specified in this agreement at all, is there? A. No, sir, there is not.

Q. And such clearance as the Loew theatres got, then, was simply the product of the booking arrangements made between your booker and the Loew's bookers? A. No, sir. It was the clearance—they got the same clearance that had been in effect.

Q. You mean that priority that they enjoyed had been well established over a long period of time? A. We had agreed with them on the clearance that they would receive, yes, sir.

Q. And that, of course, is also true of the division of film products in the New York metropolitan area between the Loew Circuit and the RKO Circuit, isn't that right?

The Witness: Will you please repeat that question?

Q. (Read.) A. I don't believe I understand it, Mr. Wright.

Q. Well, you are familiar with the term the "Loew split"? Do you know what that means? A. Loew split?

Q. Yes, what is the Loew split in New York?

Mr. Goddard: You mean L-o-e-w split or l-o-w?

Mr. Wright: L-o-e-w.

(1097)

A. I don't know, sir.

Charles M. Reagan—By Defendant—Cross

Q. You never heard that term used in the trade? A. I know that the pictures that we sold to Loew are the pictures that—well, I don't know whether you would call Loew's the Loew's split or not, but that is whom we sell pictures to.

Q. Just answer my question.

Mr. Wright: Read the question again.

Q. (Read.) A. Some pictures in the subsequent-run houses in New York are sold to Loew and some are sold to RKO.

Q. And which are the companies that are in the Loew split?

Mr. Proskauer: I object to that as incompetent. It is assuming that there is something known as a Loew split or that it has any special significance.

Judge Hand: Overruled. We will give him a chance on cross-examination.

A. We sell pictures to Loew's subsequent-run theatres; Metro sell pictures to the Loew subsequent-run theatres; United Artists sell pictures to the Loew's subsequent-run theatres. I believe Columbia sells some pictures, and I also believe Universal does too, but I am not sure about the last. (1098)

Q. Half of Universal, isn't it? A. I am not sure about that.

Q. And then the RKO split consists of what? A. I don't know. I know they play RKO pictures, and I know they play Fox. I don't know what else they play.

Q. And Warner and half of Universal, isn't that right? A. Yes, they play Warner. I am not sure about the Universal.

Q. And as I understood your prior testimony, you do not contend that there is any competition whatsoever in so far

Charles M. Reagan—By Defendant—Cross

as licensing your films are concerned among the theatres which are affiliated with the defendants, isn't that right?
A. That is right.

Mr. Davis: Read that question. I missed part of it.

Q. (Read.)

The Witness: I don't believe I understand what you mean, Mr. Wright.

Q. What did you mean when you were talking about competition in your direct testimony?

Mr. Seymour: He talked about it in a lot of connections. I think he ought to specify.

The Witness: If you will be more specific I will try to answer.

Judge Hand: Overruled. Let him answer.
(1099)

The Witness: I don't know what you mean, Mr. Wright.

Mr. Wright: Will you read the last question?

Q. (Read.)

Mr. Leisure: When was he talking about it? The witness testified a full day. I don't know what Mr. Wright means.

Mr. Davis: I submit, your Honors, that where the witness asks the examiner to explain his question, it is the duty of the examiner to make his question plain to the witness if he wants an answer.

Mr. Wright: I am asking him to explain his direct testimony.

Charles M. Reagan—By Defendant—Cross

Q. Now, you are unable to explain what you meant when you used the word competition in your direct testimony; is that correct?

Mr. Seymour: If your Honors please, that is a very objectionable question.

Judge Hand: I will sustain that objection. You have got to point out what you are driving at. I don't know, and none of the Court knows.

Q. It is a fact, is it not, Mr. Reagan, that there is no effort made by the operators of theatres which are affiliated with one or more of these defendants to bid in opposition to one another for the privilege of licensing the exhibition (1100)

of the films you distribute in their theatres? A. Well, I know that some of the defendant companies would like to play Paramount pictures—

Q. Well, would you just answer the question? A. I am trying to.

Mr. Wright: Well, listen to it.
Read it again.

Judge Hand: Let him try to answer it and then go after him again if you are not satisfied. Go on.

A. (Continuing) I know that some of the defendant companies in this suit would like to play Paramount pictures and have tried very hard to license them; but we have not in many instances sold pictures to them because we prefer to do business with the customers who we are at present selling.

Mr. Wright: Now read the question.

(Question read as follows: "Q. It is a fact, is it not, Mr. Reagan, that there is no effort made by the

Charles M. Reagan—By Defendant—Cross

operators of theatres which are affiliated with one or more of these defendants to bid in opposition to one another for the privilege of licensing the exhibition of the films you distribute in their theatres?")

Mr. Wright: You can answer that yes or no, can't you?

A. No, that is not the fact, no, sir.
(1101)

Q. Now, in licensing films here in New York City, can you recall any time when the RKO Circuit made you an offer of any kind for the exhibition of your films in that circuit instead of in the Loew Circuit? A. No, sir, I cannot.

Q. Now, is the national gross of film rental that you receive on a picture a business secret?

Judge Hand: Are you arguing, really, that RKO did not come into the Loew Circuit at all? I do not understand you.

Mr. Wright: I am arguing, if the Court please, that there is a set pattern of distribution as among these defendants in which there is no room for competitive negotiation at all; that it is cut and dried and set—

Judge Hand: All right. You are arguing that RKO did not come in and obtain licenses at all for their theatres in the Loew Circuit?

Mr. Wright: No. If the Court please, each of them has a circuit in the New York Metropolitan—

Judge Hand: All right, that may perhaps be true of the others. Are you arguing what I have just suggested?

Mr. Wright: Frankly, I did not quite understand what you suggested.

Charles M. Reagan—By Defendant—Cross

(1102) Judge Hand: Are you arguing that RKO will not ask for or obtain Paramount pictures within the Loew Circuit for exhibition within the Loew Circuit?

Mr. Wright: Well, the asking, if any, would be for the exhibition of the pictures that the Loew's Circuit now uses, for exhibition in the RKO Circuit. The two circuits both operate in the same area here in New York; and I am suggesting that not only Loew but RKO and Paramount all understand perfectly well how and which is to play the pictures of each major distributor.

Now please read the last question.

(Question read as follows: "Q. Now, is the national gross of film rentals that you receive on a picture a business secret?")

A. We don't like to have it generally known, no, sir.

Q. Well, if an independent exhibitor came up and asked you for a statement as to exactly what any one of your pictures grossed in the United States, would you tell him? A. It would depend upon who it was. I might and I might not. I have in many instances; yes, sir.

Q. Would you give him an audited statement? Would you? A. Oh, no, I would not do that.

(1103)

Q. Generally, those gross figures are certainly not revealed by you as a matter of course to the trade press or to anyone else, are they? A. Not as a matter of course, no, sir.

Q. What are these telegraphic reports you get as to the grosses in certain theatres of other distributors' pictures? A. What are they?

Q. What theatres do you get those from? A. That is a list of theatres in which Paramount has an interest.

Charles M. Reagan — Defendant — Cross

Q. What are the theatres, where are they, how many are there? A. I can't tell you the number, but they are pretty well scattered all over the country.

Q. Does it vary, does the list vary from day to day or week to week or have you a set group? A. No, the list is the same.

Q. Can you give us the list? You have a record of it somewhere, haven't you? A. Yes, we do have.

Q. Could you produce that for us? A. Yes, sir.

Mr. Seymour: If you will bear with me just a moment I will give you a copy of the form.

Mr. Wright: I don't want a copy of the form. I want a copy of the list of the theatres. You understand.

Mr. Seymour: It is on there. Bear with us just a moment.

Q. While he is looking—

(1104)

Mr. Seymour: Just take a second.

Q. What do you do with those figures after you get them? A. I look at them, familiarize myself with the gross of all the pictures included in the list.

Q. Then what do you do with them? A. I send them to my division managers.

Mr. Seymour: I hand Mr. Wright a copy of the form.

Mr. Wright: Have that marked with the next plaintiff's exhibit number. Mark it as 375 for identification.

(Seven sheets marked Government's Exhibit 375 for identification.)

Charles M. Reagan—By Defendant—Cross

Q. You say after you have looked at the data on the list there—that is filled in and telegraphed to you daily, is that right? A. It is not telegraphed to me. It comes to me daily. It is compiled by the statistical department.

Q. And it is given to you; you get a report for each day's play? A. Yes, I get one of these every day.

Q. For every day in the year? A. Yes.

Q. For how long has that been going on? A. I have gotten these lists ever since I have been in New York.

Q. That is, you got them as a division manager here? A. Yes, sir.

Q. Before you became the general sales manager? A. (1105)

Yes.

Q. Then you turn them over, you send them to the division managers? A. And they go to file.

Q. Then they are sent to the files, is that right? A. Yes.

Q. When was this formula deal that you described in your direct testimony first worked out with the theatres in which Paramount is interested? A. I believe it was the 1940-41 season.

Q. That was at the time Mr. Agnew was general sales manager? A. Yes, sir.

Q. And which are the companies that you do business with on that formula deal basis? A. I do business on the formula deal basis with some of our own theatre affiliates and I also do business on the formula deal basis with the various companies that comprise the Fox circuit of theatres.

Q. Any others? A. No, sir, that is all.

Q. Which are the affiliates of yours that you do business on that basis with? A. I can't give you that from memory, but I can get the information for you.

Q. You have a list of those corporations that you could give us? A. Yes.

Q. A sample of that deal is this agreement that has been marked in evidence here as Exhibit 241 between your company and Evergreen Theatres Corporation? A. Yes.

Charles M. Reagan—By Defendant—Cross

Q. That is a Fox affiliate? A. Yes, sir.
(1106)

Q. And that is one of the Fox affiliates you refer to. Do you recall when it was that you first began to use that formula deal with Fox. A. I think that was in 1940-1941.

Q. You have used that with them ever since? A. Yes, sir.

Q. As I understood you, in originally negotiating that deal how was it that you arrived at the particular percentage formula that you used? I will withdraw that. Perhaps to make it clearer you had better read one of those agreements to the Court so they will have some idea of what is in there. I think it is only a page long, isn't it? The one I am going by, I think, is the first. A. Want me to read the whole thing?

Q. Yes, read whatever there is. A. "Agreement made this 5th of June"—

Judge Hand: Isn't that a very cumbersome way of presenting something?

Mr. Wright: It is rather difficult—

Judge Hand: Can't you state what it is without contradiction with the other people?

Q. What you have there is, isn't it, a sliding scale agreement whereby the exhibitor pays to you a stipulated percentage of the national gross of the feature as rental for the use of the films for a certain amount of playing time on certain runs in his circuit, isn't that correct? A. That is right, except the sliding scale feature, it is an actual percentage, a
(1107).

definite percentage of what we gross on a picture nationally.

Q. Yes, and the fixed percentage, then, also varies in accordance with the national gross, that is, you have a higher fixed percentage if you have a higher national gross and a lower fixed percentage if you have a lower national gross, isn't

Charles M. Reagan—By Defendant—Cross

that right? A. We have three different percentages, depending upon the type of picture.

Q. I understand you have; even on the one picture there, your agreement provides for a variation in the fixed percentage of the gross that the circuit pays depending upon what the picture does nationally, isn't that right? A. No, the fixed percentage is the same.

Q. I call your attention to page 3 of the agreement here, where it says, "No. 1: In excess of \$1,250,000, the exhibitor shall pay as a license fee for such photoplay .74778 per cent of such total license fees; 2, equal to or in excess of \$500,000, but not in excess of \$1,250,000, the exhibitor shall pay as a license fee for such photoplay .70115 per cent of such total license fee; 3, if less than \$500,000 the exhibitor shall pay as a license fee for such photoplay .65431 per cent of such total license fee."

Well, now, the first figure referred to in each case there is the national gross of that particular picture, isn't that right? (1108)

A. That is correct.

Q. And the percentage that is paid does decrease as the national gross decreases, isn't that right? A. That is right. I misunderstood your question. This percentage of .74778 applies on any picture that grosses in excess of this amount.

Q. That is, you apply the same formula to all pictures, isn't that right, that you license? A. Yes, sir, that formula that percentage may change from time to time and does.

Mr. Caskey: May I hear that last answer?

(Record read.)

Mr. Caskey: On each picture? This contract is for one picture, Mr. Wright.

Mr. Wright: There is no question about that. I am asking him whether he uses the same formula that

Charles M. Reagan—By Defendant—Cross

is in that contract for each picture or whether he uses a different formula each time for each picture.

Q. What is the fact of that? A. We may use the same percentage for five or six or ten pictures, and we may change the percentage.

Q. That is, you handle them in brackets, is that right, one set of percentages for one group and then a different one for another group? A. Yes, sir.

Judge Goddard: You mean group of pictures or (1109) distributors?

The Witness: No, these are pictures, individual pictures released by Paramount.

Judge Goddard: Yes, I understood that, but when you referred to group, you referred to group of distributors or group of pictures?

Mr. Wright: No, group of pictures.

Judge Bright: As I understand it, that is the rental price for those particular pictures in this particular circuit in place of a percentage of the gross of the exhibitor?

The Witness: No; in place of the percentage of the gross of a picture for each theatre, we agree upon them paying a percentage of what we do nationally for each theatre that is included in this deal, from what we do nationally. Let me start over and see if I can make it clear. If we gross a million dollars on a picture nationally, the theatres that are included in this contract pay us a percentage for those theatres of whatever their share of that million dollars is. Is that clear?

Judge Bright: That is in place of their paying a percentage of their particular gross in each theatre?

Charles M. Reagan—By Defendant—Cross

The Witness: Yes, sir, they pay what we can do nationally on a picture, they pay a percentage of that.

Judge Hand: So, instead of having a percentage
(1110) on the transaction with that particular exhibitor, you allocate the burden among all the exhibitors?

The Witness: They pay—

Judge Hand: You fix some kind of percentage or percentages of the—

The Witness: Of our national gross.

Judge Hand: Yes.

Q. Now, under that agreement, of course, there is no final settlement on the picture until perhaps two years or a year and a half after the picture is first released and played, isn't that right? A. No final settlement, no, sir.

Q. Because you provide for an audited statement there at the end after all runs have been exhausted throughout the country? A. We furnish a statement showing what we finally gross on a picture.

Judge Bright: There is no way of anticipating it?

The Witness: Yes, they pay—we estimate what we thought we grossed at the time they begin to play the picture, and if that is \$26,000, they pay that \$20,000 over a period of 17 weeks, and then when we finally furnish a certified statement of what the gross is, we adjust the payment upward or downward.

Q. In so far as determining what the film rental is for any particular theatre in the circuit, that is something that is never ascertainable until long after the picture is played,
(1111)

is that right? A. Well, I cannot ever tell what film rental is charged to any individual theatre.

Charles M. Reagan—By Defendant—Cross

Q. That is right, even when you finish, you simply have

— A. They pay me based upon a percentage of what I do nationally with the picture.

Q. And how that rental is allocated among the various theatres in the circuit, I suppose, is entirely a concern of the exhibitors? A: Yes.

Q. You have nothing to do with that? A. Yes, I don't know how they do that.

Q. In that series of contracts you have there for the 1943-1944 season, on this formula deal, what, if any, provisions are there as to when and at what admission prices the circuit plays those films? A. I am not sure without looking at the contract. (Examining papers.)

Will you ask that question again, please?

(Question read.)

A. Well, the question of when they will play them is governed by this clause, "The clearance and availability with respect to the theatres licensed hereunder shall be the same as are in effect at the date hereof unless otherwise noted on schedule A attached hereto."

(1112)

Q. All that you have on Schedule A is just the name of a run opposite the theatres, is that right? A. It says that the clearance and availability shall be the same as is in effect at the time the agreement is signed unless we change it by a notation on Schedule A, which is attached.

Q. I understand that. Now will you look at Schedule A and answer the question I just asked you? A. Schedule A does not list the clearance and availability.

Judge Bright: I thought the question was first aimed at the admission price.

Mr. Wright: That is also included in my question.

Charles M. Reagan—By Defendant—Cross

Q. I take it there is nothing there refers to what admission prices shall be charged? A. There is nothing in the contract with respect to admission prices but, again, the same admission prices apply. It is understood, that were in effect at the time that the contract was signed.

Q. That is simply an oral understanding between you and Fox? A. It is oral, if it is not in here.

Mr. Seymour: Do you mind inquiring, just so the Court will know—you haven't shown the Court the exhibit—whether the standard regular form of contract is annexed to those papers? It is, isn't it?

Mr. Wright: Yes.

Q. I take it every time you make a deal with anybody you always annex the standard form and then superimpose (1113) whatever—

Mr. Seymour: I mean Paramount standard form.

A. It is a part of this contract, yes.

Q. No question about that, but in the standard form there are no minimum admission prices filled in, are there?

A. No, there is not.

Q. And I take it whatever is in the printed form is, of course—which may be in conflict with whatever you have got in the typewritten rider—is superseded by the rider? A. That is correct.

Q. In selling the opposition to that circuit, the independent opposition, that standard form is used and you fix the minimum admission prices and the times when those pictures are to be played by the opposition, isn't that right?

A. Well, in many instances the admission price is included, in some it is left out.

Q. When it is left out, you expect them to maintain—

A. The same admission prices.

Charles M. Reagan—By Defendant—Cross

Q. —the customary price? A. That they have been charging, as we do in the case of Fox.

Q. In the case of Fox, however, in the event that they decide for some reason or other to lower the admission price or change the policy, there is nothing in the contractual relations between you as expressed in that exhibit which would (1114)

prevent them from doing so, isn't that right? A. There isn't anything in this contract that would prevent them from doing so, but if they were to do so, and it was injurious to our business, we certainly would stop it.

Q. That would be done by agreement with Fox? A. We would try and get them to correct it immediately, and if they did not, we would not continue to make a deal where we thought our business was being injured.

Q. And the extent to which corrections are made, I suppose, is just like any other modification that you may make in any—or any adjustment of any agreement—comes down to a matter of, ultimately, the bargaining strength of the parties, does it not? A. It is a matter of negotiation, yes, sir.

Q. What happens under that form of agreement, if during the time it is operative Fox picks up some new theatres or, let us say, drops some? A. Well, if they add theatres, we increase the percentage. If they drop some, we decrease the percentage.

Q. On that again, although you have nothing about that in the agreement itself, that is just your practice? A. Yes, because these agreements only cover one, two or three pictures—five at the most.

Q. Yes, but they are effective for a period of as long as a year and a half, isn't that right?

Mr. Caskey: That is objected to, if your Honor (1115)
please.

Charles M. Reagan—By Defendant—Cross

Judge Hand: Overruled.

Judge Bright: Did you answer?

The Witness: Will you read the question?

Q. (Question read.) A. No, they are effective only for the period of—only for the pictures included in each agreement.

Q. But in order to liquidate the contract, that cannot be done until after the period of at least a year and a half, isn't that right? A. The final settlement cannot be made—

Q. Yes. A. —until after eighteen months.

Q. There is one other thing I want to call your attention to on that agreement: will you look at the schedule, there in the first-run theatres in Seattle. A. Yes.

Q. That lists how many theatres where the picture can be played first-run in Seattle? A. Fifth Avenue, one; Paramount, two; Orpheum, three; Palomar, four; Roosevelt, five; Music Box, six; Blue Mouse, seven; Music Hall, eight. That is for the first-run and the move-over.

Q. Yes; and according to that agreement the picture can be played by Fox in all of those eight or any one of them before it becomes available to subsequent-run exhibitors, isn't that right? A. It could play in any of them or in the (1116)

move-over, yes, sir.

Q. Or in all?

Mr. Caskey: Just a moment, please. Will you read the previous question and answer.

(Question and answer read.)

Q. Or in all? A. Yes, sir, it could play in all of them, but it would not be practical.

Q. Well, I suppose that would depend upon what Fox wanted to do with it, isn't that right? A. It would depend upon the box office drawing power.

Charles M. Reagan—By Defendant—Cross

Judge Bright: You mean play in all of them simultaneously or consecutively?

The Witness: They could play simultaneously or they could play on a move-over policy.

Q. And the judgment as to what should be done there is Fox's, not yours, isn't that right, according to the agreement? A. Yes, that is correct.

Mr. Wright: Will you mark this for identification with the next Government exhibit number?

(Marked Government's Exhibit 376 for identification.)

Q. I will hand you this list marked Government's Exhibit 376 for identification, with the heading "Paramount Franchises with Exhibitor," and the date, October 1, 1945, prepared by Charles Brouda, and ask you if that is the list you used to refresh your memory in testifying yesterday (1117)

about what franchises had been made with independents and what with affiliated companies? A. I was advised that the number that I gave yesterday of franchises that had been made was the correct number. Whether that was prepared from this list, I don't know.

Q. Who is Mr. Brouda? A. Mr. Brouda works for—he's a lawyer, I believe.

Mr. Seymour: He is in the legal department of Paramount, Mr. Wright.

Q. You were not given the data as to which particular accounts were supposed to be independent and which were supposed to be affiliated; you were just given numbers and you testified as to the numbers, is that right? A. Yes; I was assured that those were the numbers, yes, sir.

Judge Hand: Do you and the defendants differ seriously as to this particular thing you are on now?

Colloquy

Mr. Wright: I do not see how there can be any particular difference of fact. I was going to offer it in evidence but first I wanted to simply clear up some apparent discrepancies as to theatres which are listed here as independents, which is difficult for us to understand why they were classified as independents, in view of Paramount's or an affiliate's or another distributor's interests which are involved. That is what I wanted to ascertain. There is no need to bother the witness with (1118) it if we can do it some other way.

Mr. Seymour: Of course we are perfectly willing to sit down with Mr. Wright and his staff and go over the thing and get an agreement on the correct facts. These were prepared from the files by a lawyer from the legal department, which we have made available to Mr. Wright. There is no mystery about it at all.

Mr. Wright: I submit this all could have been avoided if we did not have the witness put on here to testify to things about which he obviously does not have any firsthand knowledge. He undertook to make some sweeping statements about the franchises, and I wanted to get the correct facts in the record.

Judge Hand: Can it be avoided now, or do you want to examine him?

Mr. Wright: My only purpose in examining him is simply to show that he did not know what he was talking about. If that has been established, we are perfectly willing to sit down and go over the list and get an accurate list put in.

Mr. Seymour: I hardly think that when a witness is told by the fellow who prepares a list, how it adds up, that you can say that the witness does not know what he is talking about.

*Charles M. Reagan—By Defendant—Cross**By Mr. Wright:*

(1119)

Q. Well, you had no knowledge, did you, at the time you gave the testimony as to what the precise interest in the theatres involved in those numbers were or were not, isn't that right? A. I was informed that we had a certain number of independent franchises, a certain number—

Q. And that is all you were told about? A. I did not have the detail, no, sir.

Q. Now, as to this testimony that you gave with respect to your present first-run outlets in these cities over a hundred thousand population, were you testifying there from any personal knowledge or was that again just a question of repeating something that had been told to you by the Legal department? A. No, I know the situation pretty well in those towns of a hundred thousand or over.

Q. Well, calling your attention to the town of Yonkers, New York, I think you testified that was one of the towns, you stated, which was among those which were excluded because you licensed a Paramount theatre there, is that right? Do you recall that? A. Yonkers was one of the towns, I believe, in which Paramount is interested.

Q. I call your attention to the admission of facts which was previously—first, has there been a change there between the 1943-1944 season and now? A. I am not sure about that. I do not believe there has been.

Q. Well, your admission of facts has this statement as to (1120)

1943-1944:

"32 feature motion pictures were licensed to RKO-Proctor Corporation for exhibition first-run in Loew's Yonkers Theatre."

Is that right, or is there an error here? A. I can't answer that without examining my records.

Charles M. Reagan—By Defendant—Cross

Q. I take it then that none of the testimony that you gave can be regarded as—certainly not as accurate as records that you have got available in the New York office; isn't that right?

Mr. Seymour: I object to any such question as that. If there is any error about Yonkers, I take the responsibility, because I excluded arbitrarily certain ones in asking him about this yesterday, and I read a list which I believed to be correct. If there is a difference on Yonkers, we will straighten it out; but to base what a lawyer excluded from examination—to base on that a statement that he did not know what he was talking about on anything, seems to me slightly extreme.

Q. As I recall the testimony, you read into the record the list of towns in which you said you licensed Paramount theatres; that is, those affiliated with Paramount, isn't that right? A. Yes, sir.

Mr. Seymour: I read into the record the list.

Q. Did you have any independent knowledge on that, or (1121)

was all you knew about it that that was the list that was supplied by counsel; is that right? A. That was the list of theatres which was supplied by counsel in which we were interested.

Mr. Caskey: Just a moment. I call your Honors' attention to the fact that in the trial brief on page 6 it is stated that Paramount has an interest in a theatre in Yonkers.

Mr. Wright: Do you want to testify?

Mr. Caskey: That is a statement by the Government.

Colloquy

Judge Hand: If there is nothing more going to be done about this, all right. But if you have got something here that you know can be straightened out by a little work between you, what is the use of taking pages of the record showing that some witness does not know all the details which were stated? What is it for, to discredit him generally as to his other conclusions, or what?

Mr. Wright: No. I want to get the facts into the record. Now there were a number of discrepancies between his testimony and our data, based on these admissions of fact, some of which Judge Bright noted. I wanted to get the facts in the record. I had assumed that the most accurate data the company had with respect to this first-run distribution was what they furnished us in the form of admissions of fact. Now

(1122)

he has testified to certain data which was reported to us in the admissions, and there are discrepancies; and I do not like to take up the time of the Court and the witness in straightening out discrepancies; I would be glad to do it with counsel; but I do not like to leave the record in a position where he has given this positive testimony as to what happened there, if it is understood we are going to be furnished with an accurate list as to what this first-run distribution is—

Mr. Seymour: I do not understand why all this fussing around. I excluded arbitrarily 48 cities because I was advised in those 48 cities Paramount licensed theatres in which it had an interest, first-run. Yonkers was one of those cities. I examined the witness about 44 cities. I did not examine him about the 48. If there is a dispute between the Government and ourselves as to one of those cities or several of those cities as to which I excluded, I will sit down and talk

Colloquy

about it; but we do not need to take your Honors' time, which we know is precious, arguing about it here.

Mr. Wright: There are discrepancies as to other cities about which he testified.

Mr. Seymour: Why don't you ask about those?

Judge Hand: Go on.

Mr. Wright: I have no desire to ask about it; but if counsel insists I do it that way, I have no alterna-

(1122-A)

tive.

Mr. Seymour: I have just suggested the opposite.

Mr. Wright: Now, will you supply us with an accurate list of the information that was testified to yesterday in all of the cities?

Mr. Seymour: We will reverify the information which was testified to yesterday, and if there is any change we shall advise you.

(1123)

Judge Hand: Now, we have been going an hour and a half, and a great deal of time has just been occupied by this thing which, as I understood, you were going to correct if there was any correction to be made yesterday; and we are getting kind of sick of this futility, because it won't do anything except to show that there may be some mistakes which you apparently mean to agree about. We cannot just sit here and listen to stuff which makes a confused record which you cannot understand at all except when you go over it say it is inconclusive as to everything.

Mr. Wright: I agree with your Honor; but when a witness is put on the stand to testify to these generalities, and counsel refuses to produce the records instead of the witness's testimony, it leaves us, as I say, no other alternative.

Judge Hand: No. He did not refuse to produce.

Charles M. Reagan—By Defendant—Redirect

Mr. Seymour: There is no such thing. Your Honors have a ton of stuff.

Judge Hand: Don't get up and argue about that. If you are going to make this adjustment, why, make it. If not, let him go on and just drag around here about what this witness has said, and we won't have any idea about anything except that this is an uncertain and changing world.

(1124)

Mr. Seymour: I want to assure your Honors that we are ready to sit down and discuss this, as we have spent the bulk of our time for the last year trying to help the Government out on its side of the case.

Judge Hand: I don't doubt your diligence.

Mr. Wright: We have no further cross-examination.

Redirect Examination by Mr. Seymour:

Q. With reference to this Fox agreement about which you were examined, Mr. Reagan, will you tell us the situation that existed as between Fox and the Paramount distribution department at the time the agreement was worked out originally?

Judge Bright: That is this formula?

Mr. Seymour: That is right.

A. I had been negotiating with the various Fox companies trying to work out a satisfactory deal for my pictures. Those negotiations had gone on for a matter of months. As a matter of fact, I made a trip to all of the Fox division offices where I had meetings and tried to sell my pictures; and I was unsuccessful in making the kind of a deal that was satisfactory to me; and finally I hit upon the idea of working out a formula deal with them the same as I had

Charles M. Reagan—By Defendant—Redirect

worked out with some of my own theatre affiliates, and finally was successful in doing that.

(1125)

Q. Now, do you consider that that formula deal gives Paramount as good or a better film revenue from various groups of Fox theatres as you could have worked out on an individual basis?

Mr. Wright: If the Court please, that is wholly immaterial what he considers in that connection.

Judge Hand: Let me hear the question.

(Question read.)

Judge Hand: Overruled. Let him answer.

A. I do not think I could possibly have gotten the film rentals that I am getting under this formula deal by selling the Fox affiliates under straight terms or percentage terms. I have gotten the highest percentage of increase in my film rentals from the Fox Circuit since this formula deal has been in effect of anybody with whom I am doing business.

Q. Now, at the time the formula deal was originally negotiated on the first group of pictures, did you have any knowledge or information as to what negotiations or arrangements were being made all over the country by the theatres in which Paramount had an interest for the showing of Fox pictures? A. No, sir, I did not.

Q. Did any such negotiations or arrangements at any time have anything to do with the fixing of the percentage or any other phase of the formula deal with Fox? A. It did not.

Q. Now, Judge Hand asked you a question about the formula deal, and I want to be sure that you answered it completely. I think Judge Hand understood that the effect of this percentage arrangement with Fox might somehow

Charles M. Reagan—By Defendant—Redirect

burden other exhibitors so that in some way they were carrying a part of the Fox rental. Now, is that the effect of the formula deal? A: Oh no—

Mr. Wright: If the Court please, that is a pure matter of argument as to what the effect is.

Mr. Seymour: I think when the Court asks a question I should try to help get an answer.

Judge Hand: Overruled. Go ahead.

A. (Continuing) No. The income from the Fox theatres or the film rental from the Fox theatres that were earned is dependent upon what we gross in the other theatres in the United States. It has nothing to do with anything other than that.

Q. So, that if a picture is more successful nationally you get more out of Fox? A. That is correct. The more I can gross on a picture nationally the greater the film rental is that I get from Fox.

Q. Now, do you think that the percentage that you fixed in the formula deal represents less than Fox's normal or fair share of the total national gross? A. Well, it represents a (1127) substantial increase over what I was getting prior to the time that I made the formula deal.

Q. Does it have the effect of in any way burdening or putting any special handicap on other exhibitors? A. No, sir, it does not.

Judge Hand: I do not see why you necessarily get more than you would get under a straight percentage deal.

The Witness: Well, actually that is what has happened because if a circuit of theatres paid me a certain percentage of my national gross on a picture prior to the time that I made the formula deal, when

Charles M. Reagan—By Defendant—Redirect

I made it I increased that percentage. Let us say it was one per cent. When I made the formula deal I increased that to more than one per cent. Then the more that I could get for my pictures nationally, the better my film rental income is, the greater the film rental is from Fox; and that has been a very substantial increase, better, I am sure, than I could have gotten if I had sold Fox at the normal or straight percentage terms.

Judge Bright: Does this formula deal only apply to this Evergreen Circuit?

The Witness: No. We sell the formula deal to all of the separate affiliates of Fox, of which there are about five, I believe.

Q. And a separate formula deal with each one? A. Yes; (1128)
we do have a separate percentage.

Q. And a separate contract with respect to each group of pictures? A. The percentage is different, and the contract is separate with each affiliate.

Q. And in each case the regular form of Paramount license contract is included among the papers making up the final terms? A. Yes, sir, that is correct.

Judge Bright: How did you arrive at the percentages of those film receipts which you apply to the several formula contracts?

The Witness: Well, for instance, let us take as an illustration the Evergreen Theatres: If they had paid me for my pictures the season prior to the time I made the formula deal one per cent of my national gross on those pictures, I used that one per cent and added an increase to it, and then they were to pay me that increased percentage of what I did from that

Charles M. Reagan—By Defendant—Redirect

time on, what I did with my pictures, what I grossed with my pictures from that time on.

Q. Now, turning to the Loew papers that Mr. Wright examined you about: Are they before you? A. No, sir, they are not.

Judge Bright: What is Exhibit 376?

Mr. Wright: That was a list of Paramount franchises prepared by Mr. Brouda dated October 1, 1945.

(1129)

Judge Bright: May I see it?

Mr. Wright: Yes (handing). I do not think that is in evidence. It is merely for identification, as I understand it.

Mr. Seymour: We are to check it over with Mr. Wright.

Judge Hand: Oh yes.

Q. Now, are you familiar with the developments and course of negotiations with Loew which resulted in the letter or agreement which is marked in evidence as Government's Exhibit 243? A. I am.

Q. And will you tell us what those developments were and what the negotiations were that led up to the making of that agreement? A. We were dissatisfied with the film rental income that we were getting from the Loew theatres in New York. The terms that we had been receiving for our pictures we were not satisfied with. Loew contended that they could not pay more. We insisted that they should pay more, and finally we began an examination of their books to determine their expense. That audit covered a long period of time.

Q. Do you remember who conducted the audit? A. It was conducted by us by some of my statisticians or auditors.

Charles M. Reagan—By Defendant—Redirect

Q. Does that relate only to the New York City theatres? (1130)

A. Yes, sir.

Q. And did you insist on that audit? A. I did, because the point at which they were willing to pay me an increased percentage of the gross receipts for film rental was too high—I thought it was too high. They said they could not lower it because their expense amounted to so many dollars. I said, "Well, then, let us audit the expense and see whether the figures that you use are correct." That audit started in December of 1931.

Q. Not 1931. A. Pardon me?

Q. Not 1931. A. 1941, excuse me. It ran until some time in 1944. We were completing the play-off of the 1943-44 pictures. We had still not settled all of our differences, and I said, "Gentlemen, we are not going to play any more pictures starting with the 1944-45 season without our having an agreement on the terms on which those pictures will play settled before we begin to play them."

We began our negotiations—and we still had the settlement to make of these previous years—we began the negotiations in the fall of 1944, and I submitted to Mr. Moscowitz, the buyer, a proposition for my pictures.

Q. Now, was that proposition accepted by Mr. Moscowitz? A. It was not.

Q. Was that submitted in writing? A. It was.

Q. And the upshot was finally the agreement that is in (1131)

evidence, is it? A. No; this agreement covers the pictures that had played in the circuit prior to the 1944-45 season.

Q. Oh yes. A. I had to make this settlement also because the question of the point at which we would get an increased percentage was in dispute, and that could not be determined until after the audit was completed.

Q. Was there a time, then, when you refused to allow Loew to show Paramount pictures? A. There was a period

Charles M. Reagan—By Defendant—Redirect

from the completion of the pictures in the 1943-44 season, which was in January of 1945—that is, when the last picture started to play in the Loew Circuit from the 1943-44 season—until May of 1945 before a picture for the 1944-45 season started to play.

Q. I show you this document dated October 26, 1944, and ask if this is a copy of the proposal which you made to Loew at that time in connection with the proposed adjustment?

A. It is.

Mr. Seymour: I offer that. I am sorry I haven't got any copies, but I will provide the Government and the Court with copies tomorrow, if I may.

Is there any objection, Mr. Wright?

Mr. Wright: Do you mind if I finish reading it?

Mr. Seymour: No.

Mr. Wright: I have no objection.

(1132)

(Marked Paramount's Exhibit P-2.)

Q. Now, following the making of the settlement agreement with Loew's, which is in evidence, and to which is annexed one of the standard forms of Paramount contracts, did you in June 1945 complete negotiations and execute contracts for the showing of Paramount pictures in Loew theatres in New York? A. We did. I do not think it was June, though. I think we completed our negotiations in May for the first combination.

Q. But was the result of that 12 contracts involving individual pictures for exhibition in the Loew theatres? A. Yes, sir.

Q. And aside from any reference to the particular picture, and perhaps special terms, is this contract with reference to "Frenghman's Creek" in the same general form as the remaining contracts? A. It is.

Charles M. Reagan—By Defendant—Redirect

Q. So that it would be a fair sample of the remaining contracts? A. Yes, sir.

Mr. Seymour: I offer that.

Mr. Wright: May I ask why these were not produced with the others when we asked for the contracts for the 1943-44 season?

Mr. Seymour: These are not for the 1943-44 season.

Mr. Wright: Oh, these are for the 1944-45? I beg your pardon.

(1133)

Mr. Seymour: I am only offering one of them. They are all substantially alike. If the Government wants us to offer all of them or offer the rest, we would be glad to do so.

Mr. Wright: We have no objection to this going in. We would like to look at the others, of course.

Mr. Seymour: Yes. We will provide copies for the Court and the Government tomorrow, if the Court please.

(Marked Defendant Paramount's Exhibit P-3.)

Q. So there won't be any doubt—I may have made a misstatement when I asked the question, Mr. Reagan—these are contracts for individual pictures of the season and not for the season, isn't that so? A. They are for individual pictures released during the season.

Q. During the season? A. Yes.

Q. But they do not cover a full season? A. Oh, no, they cover individual pictures.

(1134)

Q. How Paramount considered from time to time whether it would be desirable for it to exhibit its pictures in some other theatres than the Loew Theatres? A. We have.

Mr. Wright: If the Court please, I think that is objectionable. I do not see what materiality it has

Charles M. Reagan—By Defendant—Redirect

here as to what he considered or he did not consider in that connection.

Mr. Seymour: I think it is very material. With this contract being offered and the imputation that somehow there is something peculiar about it, it seems to me the business judgment of Paramount as to why it did what it did is relevant.

Judge Hand: Overruled.

The Witness: Will you read the question?

(Question read.)

A. We have.

Q. From what point of view was that question considered by Paramount? A. From the point of view of where we could get the most film rental.

Q. Did you reach any conclusion on that subject? A. We did.

Q. What did you conclude? A. We concluded that we could get more film rental for our pictures by selling the Loew theatres than we could by selling anyone else.

Q. Why did you feel you could not get as substantial (1135)

film revenue from other theatres as you could from Loew?

A. Because there isn't any other combination of theatres that can gross as much money or pay as much money for film rental as the Loew group in existence in New York. We investigated the situation very thoroughly, we made a number of surveys, made trips around the City of New York, Mr. Owen, our branch manager, Mr. Randall, and myself, trying to find out and learn if there was a possibility of selling our pictures any other way or any way that would return a greater film rental than we got from Loew. We came to the conclusion that there was not because we not only would lose the Loew business, but if we tried to replace that business with other theatres that we are now serving, we would lose that business also.

Charles M. Reagan—By Defendant—Redirect

Q. Referring to the period when you refused to release pictures to Loew, while you were still negotiating settlement, why didn't you release those pictures subsequent-run without prior showing in Loew theatres? A. Because I was negotiating with Mr. Moskowitz from day to day and hoped to conclude our negotiations, and I did not want to lose that revenue.

Q. Could you have received anything like the substantial revenue if you had released them on second-run or subsequent-run? A. No, sir, we could not.

Q. You said, I think, and the papers indicate, that there (1136)

was no written agreement for the 1943-44 season? A. That is correct.

Q. Was there any oral agreement? A. There was an agreement that we would make a deal based upon the results that came from the audit which would enable us to determine the place at which we would get—the point at which we would get an increased percentage.

Q. In the meantime, they simply played the pictures? A. Played the pictures and made a payment on account.

Q. That was subject to final adjustment in connection with the final audit or after the final audit, is that right? A. Yes, sir, that is correct.

Q. Have there been occasions when you had disputes or controversies with independent exhibitors? A. There have been.

Q. When you have allowed them to play the pictures pending final adjustment of your controversy or your disputes? A. Yes, sir.

Q. Has that happened frequently? A. Yes, it happens every day.

Q. Was the general nature of the arrangement for film rental with Loew a percentage to a split? A. It was.

Q. And the dispute was as to where the split should come? A. That is correct.

Charles M. Reagan—By Defendant—Redirect

Q. Are percentage arrangements with split used by Paramount (1137)

mount in distributing its pictures to independent exhibitors?

A. They are.

Q. And are they also used for licensing its pictures in theatres in which other defendants have an interest? A. Yes, sir.

Q. Are they common percentage arrangements? A. Yes, sir.

Q. Do other distributors also distribute on the basis of a percentage to a split? A. Yes, sir.

Q. You were asked something about what Mr. Wright described as Loew's split in New York. Is it correct that—have you heard that term used in connection with the fact that the product of some distributors is played in Loew's theatres? A. Some is played in Loew's, some played in RKO.

Q. So far as Paramount Pictures are concerned, are they played in Loew theatres? A. They are.

Judge Bright: In Loew's theatres only?

The Witness: Yes, sir.

Judge Bright: In Greater New York?

The Witness: Yes, sir; or there may be an isolated instance where we play pictures in an RKO theatre.

Q. That does not apply to all runs, does it? A. You mean are Paramount pictures only played in Loew theatres?

Q. Yes. A. Oh, no.

Q. They are only played in Loew theatres on what run? (1138)

A. They play in Loew theatres following the completion of the first-run in New York and Brooklyn.

Q. And then in— A. Then they play in subsequent theatres following that.

Q. And they play in all sorts of subsequent-run theatres?

A. All that we can sell.

Charles M. Reagan—By Defendant—Redirect

Q. So it is only that intermediate run, or whatever you call it, in which they are played only in the Loew theatres?

A. We sell to Loew rather than to RKO, who is Loew's competitor for those runs.

Q. Is the selling or the licensing of Paramount pictures to Loew in that particular run, or those particular runs, and the licensing of the product of other distributors either to Loew or to RKO, the result of any understanding or agreement between the distributors? A. No, it is not.

Mr. Wright: Same objection.

Judge Bright: There must be an understanding between some of the distributors, isn't there?

Mr. Seymour: It is the result of an understanding between—

Judge Bright: I am asking him.

The Witness: Only—I don't know what the understanding is with respect to the others. I know in our case we would prefer to sell Loew's because we think we can earn more film rental there.

(1139)

Judge Bright: As the result of an understanding because of this so-called Loew split in Greater New York.

The Witness: You have to sell either Loew or RKO. Some sell Loew.

Judge Bright: Why do you have to sell?

The Witness: Because there are no other theatres that can return the revenue that those two groups of theatres can return.

Judge Hand: Well, you have an understanding that this will be your course of business with Loew?

The Witness: Well, I have tried to sell Loew because I think we can get more film rental selling Loew than I could if I sold RKO.

Charles M. Reagan—By Defendant—Redirect

Judge Bright: What has this so-called Loew's split go to do with that?

The Witness: I don't know. I don't know what points.

Q. What I was inquiring about—I am afraid I did not frame my question correctly—was this: Is the fact that Paramount licenses its pictures to Loew in the runs in which it licenses them a result of any agreement between distributors other than Paramount and Loew? A. No, sir, it is not.

Q. Well now, is it what I understand to be the fact that following the run of the Paramount pictures in Loew the-

(1140)
atres, they are shown in all kinds of subsequent-run theatres in New York? A. Yes, sir, that is correct.

Q. Is that true of the other pictures which play in Loew theatres, as far as you know? A. Yes, sir.

Q. And is it at that stage, when they are playing in the subsequent runs indiscriminately, among all kinds of theatres, that they are described as the Loew split, meaning that they were pictures that played in the Loew theatres? A. That is a good description, yes, sir. It did not occur to me. Pictures that played the Loew theatres are talked about as the Loew split, by the subsequent-run exhibitor, and the pictures that played the RKO theatres are talked about as the RKO split by the subsequent-run exhibitors.

Q. Have you ever heard the expression used in that connection before I used it? A. Yes, sir. That did not occur to me. That is correct.

Q. Judge Bright asked you yesterday about extended runs, and I would like to be sure that we have got that adequately covered so that his question is answered. What type of pictures are usually played on extended runs? A. The most successful box office attractions.

Charles M. Reagan—By Defendant—Redirect

Q. What is it that determines whether a picture shall have extended run? A. Its gross at the box office.

Q. Does the playing, from your experience in the business, does the playing of a picture on an extended run have a detrimental or a beneficial effect on the subsequent-run exhibitor? A. Well, a picture—

Mr. Wright: If the Court please, he is not competent to give testimony as to what it does to the subsequent-run exhibitor. He is not a subsequent-run exhibitor and has no interest in it.

Mr. Seymour: I think he can give it and your Honors can weigh it.

Judge Hand: Overruled.

A. A picture that has an extended-run in the first-run theatres also does a better business in the subsequent-run theatres because the pictures that do well first-run also do well in the subsequent-run, because they are successful box office attractions.

Q. Is it usual for the first-run theatre playing on an extended-run to continue its advertising during the period of the run? A. They do.

Q. And does the advertising by the first-run benefit subsequent-runs? A. Yes, sir, I believe it does. I am sure it does.

Q. Would the continuance of the advertising over a longer period benefit them more greatly? A. The longer the first-run, the more successful the picture is in the subsequent-runs.

(1142)

Q. Is it your observation that the more people who see pictures or who see advertising about pictures, the more that want to see them? A. More that want to see them.

Q. I asked you yesterday, Mr. Reagan, about the special attractions which had been distributed by Paramount at

Charles M. Reagan—By Defendant—Redirect

advanced admission prices, and you mentioned, I think, "For Whom the Bell Tolls," "Reap the Wild Wind"—— A. And "Northwest Mounted Police."

Q. (Continued) ——and "Northwest Mounted Police." And I think I asked you a general question as to whether—or perhaps Judge Bright did—as to whether the same advanced admission price was required of all theatres, whatever their run, and was there any difference in that regard as between those pictures. A. Well, in the case of "For Whom the Bell Tolls" it played at an admission price of 75 cents for matinees and 75 cents and \$1.10 at night wherever it played. That was in a limited number of first-run theatres. It did play in a few subsequent-run theatres, but not many, a few here in New York and I think a few in Los Angeles.

In the case of "Northwest Mounted Police" and "Reap the Wild Wind," the admission prices were increased about 10 to 15 per cent in each theatre over what they normally charged.

(1143)

Q. So that the existing differential between the admission prices for various runs was maintained but there was some slight advance in admission prices all along the line? A. That is correct.

Q. And eventually all those pictures were played at regular admission prices? A. They were. They were all released at regular admission prices after the advanced admission-price engagement.

Q. Could you tell us approximately how many pictures the average first-run theatre in the average city requires for an annual program? A. Well, that varies depending upon the size of the city. Depending upon the size, they may use 104 pictures, they may use 70, or may use 50. In an important city, probably one picture a week or fifty a year, or two.

Charles M. Reagan—By Defendant—Redirect

Q. There are some theatres like Paramount in New York which play a picture for a number of weeks? A. Well, they only use 10 or 12 pictures a year.

Q. But dealing with smaller communities than New York, even communities of 500,000 or so, does the first-run theatre usually play for more than a week on the average, first-run? A. Well, again, that depends upon the size of the city. It may be—

Q. In any event— A. A theatre may play five or six (1144) pictures a year for a period of two weeks and the rest for a week in a town of 500,000.

Q. In any event, is it fair to say that many first-run theatres require 52 or more pictures a year? A. Many of them do, yes, sir.

Q. And some require substantially more than 52? A. That is correct.

Q. How about subsequent-run theatres, on the average do they generally require substantially more than 52 pictures a year? A. They do.

Q. Do many of them require more than 104 pictures a year? A. Some of them make two changes, three changes a week; some of them run double bills, requiring 156 to 204 pictures a year.

Q. Do you know what is the largest number of pictures distributed annually by any distributor of quality pictures in the United States at the present time? A. Well, we distributed 27 last year. I should say that 35 or 40 would be the maximum any of the—

Q. Is it the fact, then, that with few exceptions, no first-run or subsequent-run theatre could exist on the product of any one distributor? A. That is correct.

Q. I want to ask you just one question about Exhibit 243. There is a column on it headed "House Expense." Does that mean all overhead items, do you know? A. Yes, sir, it does, means the operating expenses of the theatre.

Charles M. Reagan—By Defendant—Redirect

(1145)

Mr. Seymour: Judge Proskauer got me to ask that question. Now he would like to clear it up, so I will let him inquire.

By Mr. Proskauer:

Q. That means but the actual out-of-pocket operating and running of the theatre; it does not include such items as rent or anything of that sort? A. It does include rent.

Q. It does include rent? A. It includes everything except the film rental. This is the house expense exclusive of film rental.

Q. Then you have an item there of taxes. Does that include any general taxes, or does that just refer to taxes on amusement? A. Yes, that is the New York—I am not sure whether it is a New York sales tax on admissions or whether it is on film rental.

Q. But it does not mean any such thing as real estate taxes? A. No.

Q. Or general corporate taxes or anything of the sort? A. No.

Mr. Seymour: I have no further question.

Mr. Wright: I have just one question.

Recross Examination by Mr. Wright:

Q. Did I understand you to say, Mr. Reagan, that if a picture is played first-run, let us say, for six weeks and (1146)

then moves into a second-run house for a run of one week, that the second-run will make more money than if the picture had played, let us say, one week in the first-run before it moved into the second run? A. The more successful a picture is—

Q. See if you can just answer that yes or no.

Mr. Seymour: I do not think the witness should be confined to yes or no.

Charles M. Reagan—Recross by Mr. Wright

A. I can't answer it just yes or no without explaining it.

Q. Answer it first and then explain it.

Mr. Wright: Will you read the question?

(Question read.)

Q. (Continued) That is, more money in the second-run exhibitions? A. No, I don't think it would; but—

Q. Would not make as much, would it? A. But there is more to the answer than that, if you will let me make it.

Q. Go ahead. A. Let us take a picture like "Going My Way." It played, for instance, in the Paramount Theatre ten weeks. That was a very long engagement of that picture yet that picture in the subsequent-run theatres in New York was one of the best gross pictures that they have ever had, and, generally speaking, the longer the run—the more successful a picture is in the first-run, the longer the run, the more successful it will be in the runs that follow, because it is a better box-office attraction.

(1147)

Q. All you are saying is that the better box-office attractions do better everywhere and they are played longer in the first-runs as well as in all runs, is that right? A. They do do better everywhere, yes, sir.

Q. But you have had, have you not, a number of complaints from subsequent-run exhibitors in many situations where they objected to the fact that you have virtually exhausted the patronage for a picture in a town by continued first-runs and move-over first-runs before they ever got it? A. Yes, they would like to play them only about a week or four days, the shorter the better, because they would get—they think they would do better with it. I don't agree with that in many instances.

Mr. Leisure: May I ask the witness a question?

*Leonard H. Goldenson—By Defendant—Direct**By Mr. Leisure:*

Q. Just one point, Mr. Reagan, on cross-examination that is not quite clear in my mind. Whenever you have a known, established customer, is it customary for an opposition theatre, which has sufficient product for its own operation, to bid for product you offer to your regular customer? A. No, it is not customary, no, sir.

Q. And would your answer to that question be the same or different whether or not the theatre was a so-called affiliate or independent theatre? A. It would be the same.
(1147-A)

Mr. Leisure: Thank you.

(Witness excused.)

Mr. Seymour: Would your Honors give me a couple of minutes before I call the next witness?

Judge Hand: Yes.

(Short recess.)

(1148)

LEONARD H. GOLDENSON, called as a witness on behalf of the defendant Paramount, being duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. What is your position with Paramount? A. I am vice-president in charge of the theatre department.

Q. Are you a member of the bar? A. Yes.

Q. And when did you first come to Paramount? A. In early 1933, just at the time they went into receivership.

Q. You have been with Paramount ever since? A. Ever since.

Q. Will you tell us the various positions you have held?

A. When I first went with Paramount I was sent up to New

Leonard H. Goldenson—By Defendant—Direct

England to take charge of the reorganization of the corporations in which Paramount had an interest, and after several years I worked together with the administrators of that business. I believe I stayed there until about the middle of 1937, at which time Mr. Frank Freeman asked me to come to New York to act as his assistant, which was about the middle of 1937.

Q. Mr. Freeman who has testified here was then head of the theatre department? A. That is right. He left the theatre department in the latter part of 1938 to take charge of the production and I succeeded to his position at that time and have remained in that position since.

(1149)

Q. And are you also a director of Paramount? A. Yes, sir.

Q. Will you describe generally the nature of Paramount's interest in theatres? A. Paramount is interested in corporations that have theatres in approximately 40 states. This is through stock ownership in these various corporations. That interest varies from as low as 12½ per cent up to 100 per cent. In this way Paramount has an interest in approximately 1550 theatres, of which I would say approximately 500 are in corporations in which Paramount has better than a 50 per cent interest, and the remaining theatres are in corporations in which Paramount has a 50 per cent or less interest.

Q. Do you know the approximate amount at which the investments of Paramount in these various companies are carried on Paramount's books? A. Yes, it is approximately \$63,000,000, I believe.

Q. How are the companies in which Paramount has the interest which you have generally described operated? A. They are operated by local theatre executives who have the complete charge of the operation of those theatres. In the case of where Paramount has less than a hundred per cent

Leonard H. Goldenson—By Defendant—Direct

interest in those corporations, those local executives generally speaking own the remaining portion of the stock. In the case of where Paramount has a hundred per cent interest (1150)

in those corporations, the local theatre executives have management contracts under which they share in the profits of those corporations.

Q. So that successful management increases their reward? A. That is right, sir.

Q. Generally speaking, are the managers or operators of theatre-operating companies in which Paramount has a 50 per cent interest or less the people who operated and managed them before Paramount had any interest? A. I think in every instance that is so, yes.

Q. Are those managers or operators for the most part old hands in the theatre business? A. I think most of them were pioneers in the business.

Q. Are many of them men who have been in the business for 25 years or more? A. I would say the very minimum 25 years.

Q. Do some of those operators or managers go back to the days of Associated First National? A. Go back long before them, I would say.

Q. In New Orleans Paramount has a 50 per cent interest in the theatres in which Mr. Richards and his group are the other 50 per cent owners? A. We have a 50 per cent interest in a corporation called Paramount-Richards Theatres with Mr. Richards—

Q. And Mr. Richards and perhaps others have the other (1151)

50 per cent? A. Mr. Richards and I think three or four other people in his employ have the remaining 50 per cent, yes, sir.

Q. Is Mr. Richards the gentleman who was mentioned here by Mr. Freeman as a First National franchise holder in that area? A. That is right, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. That is, he was a First National franchise holder?

A. Was at that time, as he testified.

Q. With respect to the companies in which Paramount has more than a 50 per cent interest, including those in which it has a hundred per cent, where did Paramount procure the managers or operators who are presently managing and operating those Companies? A. I think in every instance most of those men were or have been with our company for a great number of years, long time before the reorganization of Paramount, and when Paramount was decentralized back in early 1933, at the time of the receivership, most of those men were sent by the trustees in bankruptcy or their advisers to these various areas throughout the country to become the local theatre executives in charge of those particular corporations, at which time they received contracts for the full right to manage those corporations and receive a percentage of the profits together with a fixed salary as their compensation and, I think, generally speaking, those (1152)

contract arrangements have remained in existence ever since.

Q. Are those theatre operators or managers in the companies which we are now talking about, that is, where Paramount has more than a 50 per cent interest— A. Oh, yes, I thought—

Q. —are they experienced theatre men? A. Oh, yes, most of them, I believe, have been in the business over 25 years. I don't know of a man who is the head of any of our theatre companies that has not been in the business over 25 years.

Q. Do you know the theory on which the theatre operations were decentralized? A. Well, I came into Paramount just at the time that Paramount went into bankruptcy, and having been in one phase of it, I know that the centralized system of operation was a complete financial failure. Paramount was in bankruptcy, and the trustees and those who

Leonard H. Goldenson—By Defendant—Direct

immediately preceded the trustees realized that the only way to try to overcome this was to completely decentralize the theory of operation of Paramount theatres.

What had been the trouble, I believe, was that Paramount was trying to operate their theatre operations on a national standard policy or formula. That policy, if it were used in the Paramount Theatre in New York, they were trying to use that same policy in a small town of five or six thousand. Well, (1153)

that just wouldn't go. As an example, in a small country town of three or four thousand people, you might have, if you put a tuxedo on the manager and dressed the ushers up with ushers' uniforms, and it happened to be a farming community, the farmers coming into town, they just wouldn't go into the theatre, they would be ashamed to go in, seeing this manager and the people dressed up that way. So business suffered in small town operation.

When Paramount was decentralized, what happened was that these local theatre executives, living in the communities, getting to know the communities, knowing the habits of the people, they were able to talk to people as they came into the theatre, got to know them, and as a result the theatres became part of the communities and in that way, I believe, Paramount's interest in theatres started to make money.

Q. Are all the operating companies in which Paramount has an interest operated locally? A. Every situation except two theatres. Those theatres are the Paramount Theatre in New York, which almost exclusively runs Paramount pictures, and the Newman Theatre in Kansas City, which runs almost all Paramount pictures, except that it runs, I think, some Warner pictures, I think maybe as much as half of the Warner pictures.

Q. Aside from those two, every theatre in which Paramount (1154)

mount has an interest is operated by a local manager? A. Entirely.

Leonard H. Goldenson—By Defendant—Direct—

Q. Do you consider the local management or operation the desirable method for the operation of those theatres?

A. I certainly do. After all, the motion picture business is show business and show business requires a man to have knowledge of the local tastes, the local habits of the local people, know how to advertise pictures so as to appeal to those local tastes and those local habits, and that will vary in different sections of the country. And in that way, I think, our local theatre executives, knowing those habits and those customs and knowing about the nature of the communities where they live, they can, with the greatest amount of efficiency, accomplish the purposes.

Q. What matters are left to the local management for complete decision? **A.** All matters of operating policy are left with the local management. They have the full right to pass upon all advertising; they have the full responsibility to set all admission prices; they have complete authority and responsibility for the booking and buying of pictures; they have the full responsibility for the hiring and firing of personnel, and to make ordinary repairs to theatres.

Q. With respect to the local operating policy of the character which you have mentioned, I am not sure, Mr. Golden-

(1155)
son, how about licensing pictures? Did you mention that?

A. Yes, they have the complete right and responsibility, if it is a hundred per cent interest, they have by the management contract; and in the cases of less than a hundred per cent, it is generally original agreements that were made with them or by management contracts. They have the complete right to manage all theatres and buy all pictures.

Q. Does Paramount in any way interfere with the decisions of local management with respect to those operating policies? **A.** They do not.

Q. Does the theatre department in any way interfere with them? **A.** It does not, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. If I understand you, those questions are left to local management, even where Paramount has a hundred per cent of the stock? A. Absolutely right.

Q. Will you describe generally the nature of your duties as vice-president in charge of the theatre department? A. As vice-president, the theatre department and I are obligated to look after Paramount's investment in these theatre corporations. That is done by constantly consulting with these various local theatre executives, and we have submitted to us by these local theatre executives the following things: Any capital expenditures that they recommend to be made (1156)

are submitted to us for our approval; any new leases or the extensions of old leases; the purchase of any properties or the conversion of leases to fees, or the borrowing of any money.

That always originates with these local theatre executives and then, after they have arrived at their own conclusions as to whether they want to do anything, they submit it to us for our approval, and if it meets with the approval of the theatre department, we then ordinarily, maybe immediately or later, ratify at a meeting of the board of directors their actions in making such capital expenditures or leases or extensions of them.

Q. And if I understand you, there are operating policies which are left entirely to local management, and matters of investment or substantial expenditures which are submitted to Paramount? A. That is right.

Q. Is that distinction maintained whether or not Paramount has a hundred per cent interest or a 50 per cent interest? A. It is the same irrespective of the interest.

Q. Are you an officer and director of many of these theatre operating companies? A. I think I am an officer and director of almost every one, yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. Are other members of the theatre department officers and directors of some of the companies? A. Yes, sir.

Q. Can you tell us how the officership and the board (1157)

is generally divided in companies where Paramount has a 50 per cent interest or less or more than a 50 per cent interest? A. In cases where Paramount has less than a 50 per cent interest, the board is usually constituted of the members of the theatre department, of less than half of that board. As a matter of fact, in some cases, where we have less than half the interest, we don't have any members on the board. In the cases of where we have a 50 per cent interest in the corporation, generally speaking, half of the board is made up of members of the theatre department, and where we have better than a 50 per cent interest I would say, generally, we have a majority of the board of directors of those corporations.

In every case, I believe, the local theatre executive is the president of that corporation and, generally speaking, the vice-president is either myself or a member of the theatre department, and the treasurer is a member of the Paramount theatre department. I think the secretary is selected locally by our theatre associates.

Q. Is any member of the distribution department or its general sales department or sales department an officer or director of any one of these companies? A. They are not, sir.

Q. Do questions of local operating policies come up at meetings of the boards of these companies? A. No, they (1158)

don't. I think that policy was set at the time of the reorganization of Paramount. It was, I believe, established by Mr. Freeman and has been adhered to ever since by we members of the theatre department, that is, that only matters of capital expenditure and leases, extensions of leases,

Leonard H. Goldenson—By Defendant—Direct

borrowing money and matters of that nature come to the attention of the board. All other matters of operating policy, such as buying of films and booking of films and the advertising policy and all those things are handled by the local executives.

Q. Of course, you are aware, in general, of the extent of expenditures for those matters? A. Oh, definitely. We know every bit of expenditures.

Q. But the decision as to the policy is left to the local management, is that right? A. That is right, sir.

Q. I wish you would describe for us the personnel and divisions or departments of the theatre department. A. The theatre department has one man who is generally in touch with the theatre executives in the northern portion of the United States, has another executive who is generally in touch with the local theatre executives in the southern portion of the United States, and those two executives together with myself travel throughout the United States almost constantly with the view of looking firsthand to see whether (1159)

these theatre properties are properly maintained and operated.

In addition, we have the director of the Paramount Theatre in New York, who is trained in stage presentation, who is an expert on it, and he is available for advice and consultation at the instance of any of these local theatre executives at any time. We have a man who is trained in maintenance and construction, who is constantly visiting factories, manufacturing plants, with the view of studying the trend in construction and maintenance and he is available at all times to these local theatre executives, if they want to use his services for the purpose of suggesting ways to improve the theatre construction and maintenance. We have a man who is trained in finance and taxes and who is head of the theatre auditing department. We have a man who is an

Leonard H. Goldenson—By Defendant—Direct

expert in insurance, who is available to these local theatre executives, if they wish it. We have a man who is an expert in candy merchandising, who is available to these local theatre executives, if they wish it. We have a man whom we consider an expert in real estate matters who is available at any time if these local theatre executives should care to call on him for advice or consultation. I think by and large that is all.

(1160)

Q. Is there a lawyer connected with it? A. Oh, yes. We have a man who is very well trained in all theatre problems who is available for consultation or advice at all times.

Q. And he is separate from the general legal department? A. Yes, he is separate from the general legal department.

Q. Now, does the theatre department participate at all in the negotiations by these local theatre companies for the licensing of film of any distributor? A. They do not, sir.

Q. Between whom are the negotiations conducted for the licensing of Paramount pictures in the theatres owned or operated by those companies? A. They are conducted by the local theatre executives with the various distributors that happen to have—

Q. I am asking now about Paramount first. A. They are conducted by the local theatre executives with the Paramount distribution department. That would be through their local representatives in that particular exchange area where their theatres happen to be, or, I suppose, with a district or division or general sales manager.

Q. Does the theatre department participate in those negotiations for Paramount pictures? A. No, it does not, sir.

Q. Now, with respect to the pictures of other distributors, where are those negotiations conducted? A. They are

(1161)

conducted in the exchange areas where these local theatre executives have their main offices.

Leonard H. Goldenson—By Defendant—Direct

Q. And they are conducted between representatives of the several distributors and the local theatre operators?

A. That is right, sir.

Q. Does any member of the theatre department have anything to do with those negotiations? A. None whatsoever.

Q. Does anybody else connected with Paramount have anything to do with those negotiations? A. None whatsoever.

Q. Now, by whom are questions as to such licenses—that is, the licenses of any distributor—decided as far as the theatre companies are concerned? A. By the local theatre executive in charge of those operations.

Q. Does the theatre department give any instructions to the local theatre operator as to what films he shall license, as to what distributors he shall deal with, or as to what terms he shall license pictures upon? A. It does not.

Q. Now, in the course of the negotiations between the local theatre operator and any distributor, does the theatre department participate in any way in those negotiations?

A. No, sir.

Q. Is there any procedure that you know of by which (1162)

any one group of theatres owned by a theatre operating company in which Paramount has an interest, exchanges information with another group of theatres in which Paramount has an interest, as to pending negotiations or film licenses with any distributor? A. There is not.

Q. As a matter of fact, is there any relationship whatever between the terms negotiated by a particular group of theatres in one company in which Paramount has an interest for the films of any distributor other than Paramount and the terms or contracts of any other group of theatres with that distributor? A. No. As a matter of fact I think they vary to a very great extent.

Leonard H. Goldenson—By Defendant—Direct

Q. That is, you say there is a variation between the terms arranged by one group of theatres with a distributor and another, is that so? A. That is right.

Q. Now, can you tell us how you know that? A. Well, our theatre auditing department gets in every week for purposes of certification, all the expenses of each respective theatre, and the grosses on each respective theatre, and in this way we know how much is being paid for film, and in that way I can tell whether the terms vary from circuit to circuit or from theatre to theatre; and they vary from circuit to circuit and they vary from theatre to theatre.

Q. That is, sometimes the theatres in one company vary (1163) among themselves as to the terms with the distributor, is that right? A. That is right, sir.

Mr. Seymour: My brother Phillips thinks I mis-spoke myself. May I have the last question read?

(Last question read.)

Q. Now, does the theatre department regularly furnish to the theatre operating companies any information which may be of use in their decisions as to license negotiations or what pictures they ought to play? A. Yes.

Q. And what is the nature of that information? A. When pictures first break in theatres in which Paramount is interested throughout the United States, they break, ordinarily, I would say, in key spots geographically; the local theatre operator will send in to us how the picture did, namely, whether it did very good business or a good business or mediocre business or a poor business. It will also advise us as to audience reaction, whether the audience reaction was good, whether its box office appeal was to adults or to children or to women or to men, or to the family trade, or to general appeal. And sometimes they will set forth the nature of the

Leonard H. Goldenson—By Defendant—Direct

type of campaign that they used in the selling of that picture; as an example, we may get that report in from the field and send it out, and in one instance I can recall, or a few instances, Mr. Reagan used High, Wide and Handsome yes— (1164)

terday as a picture in which Paramount had an investment of a million eight, and they lost money. Yet some of our associates, I can remember one in particular, Mr. Hudson, who is in charge of United Detroit Theatres, saw that the audience reaction to that picture was good even though it was not doing business; so he hit upon a different campaign than Paramount had used, or the theatres that had played that picture had used. He decided to sell it in the financial pages of Detroit to the financial people as to the tremendous investment in a picture; in the society pages and in the women's pages he sold it to the women; in the sports pages—there was a tremendous fight in there—he tried to sell it to the male audience because of the tremendous fight that appeared in that picture. Now, notwithstanding the fact that that picture did badly throughout the United States, according to Mr. Reagan, we know that Mr. Hudson did much greater in proportion than any place in the United States. So that brings up the fact that men who are trained showmen can see these things and use them to try to help those pictures at the box office.

Q. Now I understand that you get reports in the theatre department from the theatres in which a picture plays in which comment is made upon it in the respects that you mentioned? A. Yes, that is right, sir, and transmitting.— (1165)

Q. And then you transmit that report to the other theatre operating companies for their information? A. That is right, sir; and then in addition—

Q. Now wait just a minute. Is this a copy, or is this one of such reports as you send it out (handing)? A. That is right.

Leonard H. Goldenson—By Defendant—Direct

Q. Now there is one reference on there I wish you would explain. The word "good" is opposite the entry which says, "Possibilities in second or subsequent run." What does that mean? A. Well, if the picture generally has an appeal to family trade, or has got a general appeal, the local fellow will figure that that picture has very good possibilities in second or subsequent runs, and he will so state that. And then when this goes out to the field the bookers see how the picture played in a given area, and they will take that into consideration in arriving at their independent judgment.

Mr. Seymour: I offer that in evidence. I am sorry I haven't got copies, but I shall supply them as promptly as I can.

Mr. Wright: Are you going to offer a copy of the form on which the information comes in, or is that the form that is already in evidence?

Mr. Seymour: No, this is something different. I (1166) don't know in what form it comes in. This is the form in which it goes out.

Q. And this contains the information that is received from the field? A. Yes. This is just as it comes in from the field, and as it comes in we send it out to each of the theatre corporations in which we have an interest.

Mr. Wright: We have no objection.

(Marked Defendant Paramount's Exhibit P-4.)

Q. Now, in addition to receiving information which is sent out on forms like Exhibit P-4, do you also receive telegraphic information as to the gross business done by pictures in certain cities in the United States? A. Yes, sir.

Q. And after receipt of that information, is the form of which a blank copy is Government's Exhibit 375, made up? A. That is right.

Leonard H. Goldenson—By Defendant—Direct

Q. And then after it is made up is it sent out to the field?

A. It is sent out to the head of each of these local theatres, or executives.

Q. What is the purpose of having that report made out and sent out to the theatre operators or managers? A. When a booker gets that he sees the kind of business the picture has opened to; it shows a comparison of what a similar day did in a previous week or previous year, and he can judge as to the box office value of that attraction; and, accordingly, he knows exactly how to book the picture. He sees what the (1167)

grosses are in different sections; he may know that certain sections are somewhat comparable to his, and then he will book it accordingly, to his best judgment.

Q. I notice there is a reference in the report to the temperature on that particular day. A. There is not in that report. I looked for that but I do not find it in that, sir; but there is in our regular reports.

Q. In your telegraphic report? A. In our telegraphic report, the weather the previous day.

Q. What has that got to do with it? A. Well, if on a particular day there happened to be a strike or happened to be a storm or happened to be a cold weather spell, and say a picture in town X at a given theatre opens to \$2000, and say it should have opened ordinarily at \$4000, there may have been extenuating circumstances. So before booker will come to an independent judgment as to that picture on its opening date, he will look and see what the weather report was, or whether there was a strike, or what the conditions were. There may have been a circus in town, may have been a fair, or circumstances of that nature.

Judge Hand: We will now take a recess until two-fifteen. Tonight we shall adjourn at four o'clock.

(Recess until 2:15 p.m.)

Leonard H. Goldenson—By Defendant—Direct

(1168)

AFTERNOON SESSION.

LEONARD H. GOLDENSON resumed the stand.

Direct Examination continued by Mr. Seymour:

Q. Just before the recess, I was asking you about the reports which you mentioned and which are in evidence, which are received and furnished. Now the information is received from Paramount theatres in which Paramount has an interest? A. That is right.

Q. And is furnished to theatres in which Paramount has an interest? A. That is right.

Q. Now, is any of that information received from any other distributor? A. No, sir.

Q. Is any of that information furnished to any other distributor? A. No, sir.

Q. Does the information which is received and furnished, of the character which you have referred to, give any information as to the terms upon which any theatre has obtained the pictures which it is playing and which it has referred to?

Mr. Wright: I think he has already answered that question, if the Court please.

Judge Bright: Doesn't the exhibit show what information is furnished?

Mr. Seymour: What I am asking about is information with respect to terms, if your Honor pleases.

(1169)

Mr. Wright: He is calling now for a conclusion. I think the witness already covered it.

Mr. Seymour: If it is a conclusion, that is one objection; but on the ground that it is already covered, I do not think that is so.

Mr. Wright: We object on both grounds.

Judge Hand: Overruled. Go on.

Leonard H. Goldenson—By Defendant—Direct

A. It does not contain any terms.

Mr. Wright: What was the answer?

(Answer read.)

Q. Now as to Exhibit 375, which are the so-called telegraphic reports, they do not include reports from all theatres in which Paramount has an interest, do they? A. No. They contain reports from certain key theatres throughout the United States. I would say 175, 200; I have never counted them, but I imagine about that.

Q. Now, are the film license agreements made by the operating companies with distributors, furnished to the Paramount theatre department? A. Contracts? No contracts are furnished to the theatre department.

Q. So far as you know, are they furnished to any other department of Paramount? A. They are not.

Q. Now, after license agreements have been made, do you receive from any of the theatre operating companies abstracts or summaries of any of the provisions of the agree- (1170)

ments? A. In some cases in theatres where we have a hundred per cent interest we do receive some summaries, but it is not as a general practice or a general rule. In the cases where we have less than a hundred per cent, I do not know of any cases where we have ever received the abstracts.

Q. Now, does the theatre department furnish such abstracts to any other department of Paramount? A. We do not, sir.

Q. And, of course, not to the distribution department? A. Certainly not.

Q. Does the theatre department make any effort of any kind to see to it that the operating companies deal on the same terms or on any particular terms with any distributor?

A. We do not, sir. The film buying and the booking is done

Leonard H. Goldenson—By Defendant—Direct

exclusively by the theatre operators, by the theatre executives in the field, and we have nothing whatsoever to do with that. That is entirely their jurisdiction and their responsibility.

Q. What is the relationship between the theatre department and the distribution department? A. Two separate departments.

Q. Do you furnish the distribution department in any shape, manner or form, with any details as to film license agreements made by the theatre operating companies? A. We do not, sir.

(1171)

Judge Bright: Do you have any such information in your department?

The Witness: The only time that we have such information is from some of the hundred per cent theatres; we may get some summaries of contracts that may have been made, but outside of that, generally, we do not have them.

In the reports, audit reports that come in each week, that cover each of the items of expense in each theatre and the grosses, in those reports we know what they have paid for film. Now, in some cases they may set forth in those reports whether the pictures played on a percentage or a flat split. If it played percentage, they might compute what the final percentage was. In other words, if a picture was 35 per cent to split and that split had earned sufficient to get it up to 37½ per cent, they may just indicate the 37½ per cent of the gross that was paid for the picture, but we do not know exactly what that contract was but we know simply what the sum total of film rental was.

Q. So you can figure out a term from that report? A. That is right, only in that way.

Leonard H. Goldenson—By Defendant—Direct

Q. Do you receive from the distribution department any information as to the terms upon which Paramount licenses its pictures in theatres connected with any other defendant or with independent exhibitors? A. No, sir, we never get (1172) such information.

Q. Do you receive any information regularly, even as to the terms on which Paramount distribution department licenses to theatres in which Paramount has an interest? A. Oftentimes I never know even how Paramount licenses to its own theatres. It may be, if I am talking to a theatre associate and he says he has just made a deal for a picture with Paramount, I might find it out that way, but as a practice, no, there is no information that comes in as a regular practice.

Q. You occasionally ascertain that in informal discussions with theatre operating companies, that is, as to the terms on which they do get Paramount pictures? A. That is right.

Q. But there is no regular interchange or no formal interchange of information with the distributing department? A. That is right, sir.

Q. Do you have any information at all as to the terms on which Paramount Pictures are licensed to other defendants in this case? A. No, sir.

Q. Do you make any attempt to see in any fashion whatever that the theatres in which Paramount has an interest pay license fees to the other distributors with any relationship whatever or any connections whatever, with the license fees which other defendants in this case pay to the Paramount distribution department? A. No, sir. In the first (1173)

place, I don't have any idea what other companies pay to Paramount distribution, so I wouldn't know that. And in the second place, I have nothing to do with the buying of

Leonard H. Goldenson—By Defendant—Direct

pictures. That is handled exclusively by the theatre operators in the field. As to both of those things, I would know nothing about it.

Q. You mentioned the fact that you receive from the theatre operating companies weekly reports in the theatre department as to their operations? A. That is right, sir.

Q. That shows the various details of their operations, is that right? A. That is right.

Q. But in respect of film licenses, only the percentage appears? A. Or, if it is a flat rental, it might be there just in dollars. I can't always tell.

Q. Is any of the information received by the theatre department in those weekly reports furnished to the distribution department? A. No, sir.

Q. Do you feel free to furnish such information to the distributing department?

Mr. Wright: If the Court please, I object to how he feels. I do not see that has anything to do with it, any relevance.

Judge Hand: Overruled.

A. I could not and would not furnish that information to (1174) the distribution department. If the distribution department got that, they would be the profits that the theatres were making and they are liable to use that information to try to get greater film rentals. We happen to have interests in corporations where men have stock interests in those corporations and if Paramount would use that information against these theatre corporations, those men would suffer as a result, in their profits, and in our hundred per cent situations the men have profit-sharing contracts, and if Paramount was to use that information against those corporations, the men would get less in the way of a profit-sharing contract, so we, in the theatre department—I happen to be a director of every

Leonard H. Goldenson—By Defendant—Direct

one of these theatre corporations, I happen to be an officer, and I stand in the position of a fiduciary. If I were to give that information over to Paramount distribution, it could be used against the best interests of those corporations and I would be violating my duty as an officer as well as a director of those companies, and that is my responsibility as head of the theatre department, not to divulge any of that information.

Q. Have you ever been told by any of the theatre operating companies that you were not to disclose that information? A. Why, certainly. As a matter of fact, our theatre executives in the field would not send that information in (1175)

if it were ever divulged.

Q. For those reasons the fact is you give no information to the distribution department? A. Absolutely not.

Q. Mr. Rodgers, when he was on the stand, made reference to the Theatres Service Company and United Theatres, Inc., in New Orleans, and stated that it was his impression that Paramount had some interests in those companies. Does Paramount have any interest in those companies? A. No, sir.

Q. Mr. Richards, in acting for those companies, is he representing Paramount? A. No, sir.

Q. Mr. Richards has interests separate and apart, theatre interests separate and apart from his interest in Paramount-Richards? A. That is right, sir.

Q. And are those companies private enterprises of his? A. Yes, sir.

Q. Do those companies buy and book films for theatres in which Paramount has an interest? A. No, sir.

Mr. Wright: What was the preceding question? What was referred to by "those companies"?

Mr. Seymour: The companies that I am referring to, Mr. Wright, are Theatres Service Company and United Theatres, Inc.

Leonard H. Goldenson—By Defendant—Direct

Q. What is the interest of Paramount in Paramount Richards? A. Fifty per cent.

(1176) Mr. Seymour: Now I am going to take the balance of the tour of the 92 cities, which Mr. Goldenson is prepared to testify about, and I will do it as rapidly as I can.

Q. I am sure there will be no objection to your having a memorandum before you to refresh your recollection. I am going to ask you now about the cities in which Paramount has an interest, cities over a hundred thousand population, to which the Government has referred, where Paramount has an interest in a theatre or theatres operated on a first-run policy. Are you familiar with the theatres in those cities? A. Generally, I am familiar, yes, with most of these theatres.

Q. I wish you would proceed with the 48 cities alphabetically by States, indicating which theatres, operated on a first-run policy, are theatres in which Paramount has an interest, and describing the theatre and appraising its quality vis-a-vis the other theatres operated on a first-run policy in that city. A. Birmingham, Alabama. Paramount is interested in a corporation that has the Alabama Theatre, 2567 seats; the Lyric, 1192 seats; the Pantages, 2038 seats; the Ritz, 1479 seats; and the Strand, 799 seats. The Alabama Theatre is one of the finest theatres I believe in the Southeast. The opposition theatres that are on a first-run policy are the Empire, which has 960 seats; the Galax, which has 800 seats, and the Royal, which has 400. The Alabama and the Pantages are more than two and a half times as large as the next of the opposition theatres.

(1177)

Q. Would you say that those were the best theatres in Birmingham? A. Yes.

Leonard H. Goldenson—By Defendant—Direct

Q. Now, how many other theatres are there in Birmingham in which Paramount has no interest? A. There are 20 other theatres in which Paramount has no interest. That is, besides those three theatres that are in a first-run position.

Q. That is right. So there are other first-run theatres in Birmingham operated by other interests, and there are also 20 subsequent-run theatres operated by other interests?

A. That is right, sir.

Q. And would you say that all the theatres in Birmingham are in competition? A. Yes, sir.

Q. Now will you go on to Hollywood or Los Angeles? A. In Hollywood, California, we have an interest in a company that has the Paramount Theatre, Los Angeles, which has 3,387 seats, and the Paramount Hollywood, which has 1451 seats. I would say that the two theatres in which we are interested are at least comparable to the best theatres in Hollywood and Los Angeles.

Do you want me to name all the competitive theatres?

Q. I do not think you need to. There are a number of other theatres operated on a first-run policy, is that right?

A. That is right; and there are about 209 theatres in addition (1178)

tion to that which are on a subsequent-run policy.

Q. And Paramount has no interest in those 209 theatres?

A. They do not.

Q. Are all the theatres there in competition? A. Yes, sir.

Q. Now, of course, as to all these theatres which you are mentioning, unless you make an exception they are the theatres enjoying the first-run of Paramount product? A. Yes.

Q. In those localities? A. That is right, sir.

Q. Now, will you go on down the list, if you please. Take San Francisco. A. In San Francisco, Paramount is interested in the Fox Theatre, which has 4,651 seats; the

Leonard H. Goldenson—By Defendant—Direct

Loew's Warfield, which is 2,669; the Paramount, which is 2734; the St. Francis, which is 1495, and the State, which is 2315 seats. In my opinion, the Fox, the Warfield and the Paramount are the three of the finest theatres in San Francisco. There is opposition on a first-run policy, the Golden Gate Theatre, which has 2800 seats; the Esquire, which has 1,008 seats; the United Artists which has 1465 seats, and the Orpheum, which has 2,440 seats. I would say the other theatres are nice theatres and well located, but I feel that our theatres are at least as good if not better than the competitive theatres.

Are these theatres actually operated by Paramount? (1179)

A. No, they are not; they are operated by Fox-West Coast. Paramount operates no theatres. They only operate the Paramount, in New York City and the Newman, in Kansas City, Mo. None of the theatres I mentioned are operated by Paramount. They are operated by the local theatre operators.

Q. They are not operated by Paramount theatre operators? A. No, they are operated by Fox-West Coast.

Q. Now, how many other theatres are there in San Francisco in which Paramount has no interest? A. 75 other theatres.

Q. And are there other theatres operated on a first-run policy in San Francisco? A. Well, I already named the Golden Gate, the Esquire, the United Artists and the Orpheum.

Q. And are all the theatres there in competition with each other? A. Yes.

Q. Now will you go on down the list. Take Hartford. A. In Hartford we are interested in a corporation that has the Allyn Theatre, which is 1998 seats. In addition there is the Poli Theatre—

Q. I do not know that you need to mention the others. I think it will take too long. There are other theatres operated on a first-run policy in Hartford? A. That is right.

Leonard H. Goldenson—By Defendant—Direct

Q. And in addition there are other subsequent-run theatres? A. Yes, there are nine other subsequent-run (1180)

theatres. A would say our theatre is not as large as some of the other theatres, but I think its appointments are just as good, if not better, and I think it is well located.

Q. Is it comparable in quality? A. Comparable in quality.

Q. And are all the theatres there in competition? A. Yes, sir.

Q. New Haven. A. In New Haven we have an interest in a corporation that has one theatre there with 2,348 seats called the Paramount Theatre. There are four other theatres that are on a first-run policy. Do you want me to name those theatres?

Q. I do not think you need to bother with the names. There are also other theatres in New Haven on a subsequent-run policy. A. Yes.

Q. How many? A. There are 14 other theatres on a subsequent-run policy. In Hartford I failed to mention—

Q. You did mention. A. Did I?

Q. Now, are all those theatres in competition? A. Yes, sir.

Q. Do you consider the theatre in which Paramount has an interest there comparable with the best theatres in town? A. I do, sir.

Q. Jacksonville, Florida. A. Paramount is interested in (1181)

a company that has the Florida Theatre, which is 2,185 seats; the Arcade, which is 1,115 seats; the Palace, which is 1,314 seats, and the Temple, which is 889 seats.

Q. Are they the best theatres in Jacksonville? A. In my opinion they are the largest and the best theatres in Jacksonville.

Q. And is the Paramount also interested there in some subsequent-run theatres? A. Yes. We have seven subsequent-run theatres there.

Leonard H. Goldenson—By Defendant—Direct

Q. And are there also subsequent-run theatres in other hands? A. Yes. There are six subsequent-run theatres in competitive hands.

Q. And is there another first-run theatre there operated on a first-run policy? A. Yes. The St. John's Theatre, which has 815 seats, is on a first-run policy and in competition.

Q. Are the theatres in which Paramount has an interest the best theatres in Jacksonville? A. That would be my best judgment, yes, sir.

Q. Now, Miami. A. In Miami we have two theatres, the Olympia, 2125 seats, and the Paramount, 1134 seats. In my opinion those two theatres are better than any other theatres in the town of Miami. In competition with those two theatres of ours there are two theatres on a first-run policy in the hands of competitors, namely, the Capitol with 1234 (1182)

seats, and the Miami with 472. Paramount has an interest in a corporation in addition which has an interest in five subsequent-run theatres, and I believe there are 19, or I think 18, other subsequent-run theatres in the hands of independents.

Q. Are all the theatres there in competition? A. They are, sir.

Q. Tampa. A. In Tampa, Florida, we are interested in a corporation that has an interest in the Park Theatre, 1281 seats; the Strand, 742 seats; the Tampa, 1554 seats, and the Victory, 1381 seats.

Q. Are there other first-run theatres in Tampa? A. Yes. There is the State Theatre with 604 seats and the Lincoln Theatre, which caters to colored patronage, with 800 seats.

Q. Are the theatres in which Paramount has an interest there the best theatres? A. In my judgment they are.

Q. And are there a number of subsequent-run theatres in which Paramount has no interest? A. There are seven subsequent-run theatres in which Paramount has no inter-

Leonard H. Goldenson—By Defendant—Direct

est; but in addition we have four theatres ourselves that are subsequent-run.

Q. When you say "we have four theatres ourselves," you mean— A. The corporation in which we are interested.

Q. And are all the theatres there in competition? A. (1183)

Yes, sir.

Q. Atlanta, Georgia? A. In Atlanta, Georgia, we are interested in a corporation that operates four theatres there called the Fox, which is 4500 seats, and by far the largest theatre in that whole area; the Capitol Theatre, 2100 seats; The Roxy, 2500 seats, and the Paramount, 2476. There is in competition on the first-run policy the Grand Theatre, 1850 seats—

Q. I do not think you need to mention the others. A. All right.

Q. There are four other theatres operated on a first-run policy in competition? A. That is right, sir.

Q. Now, are there other subsequent-run theatres in Atlanta? A. There are 43 other subsequent-run theatres in Atlanta in which we have no interest.

Q. And are all those theatres in competition? A. They are all in competition.

Q. In Chicago? A. In Chicago we have an interest in a corporation which operates the Apollo Theatre, 1340 seats; the Chicago, 3872; the Garrick, 980 seats; the Roosevelt, 1535 seats; the State-Lake, 2684 seats, and United Artists, 1736.

Q. Are there other theatres in Chicago operated on a first-run policy? A. There are.

(1184)

Q. And how many additional theatres or subsequent-run theatres is Paramount interested in in Chicago? A. 39 subsequent-run theatres.

Leonard H. Goldenson—By Defendant—Direct

Q. And how many other subsequent-run theatres are there in Chicago? A. There are 185 other subsequent-run theatres in which Paramount has no interest.

Q. And are all those theatres in competition? A. They are, sir.

Q. Now, referring to the theatres operated on a first-run policy, are they the best or comparable with the best theatres in Chicago? A. In my opinion they are at least as good, if not better, than the competitive theatres.

(1185)

Q. Peoria, Illinois. A. In Peoria, Illinois, we are interested in a corporation that operates three theatres that are on a first-run policy: The Madison Theatre, 1797 seats; the Palace 1816 seats and the Rialto 1560 seats.

Q. Are they the best theatres in Peoria? A. In my opinion they are, sir.

Q. Are there any other subsequent-run theatres in which Paramount has an interest? A. There are three.

Q. And are there subsequent-run theatres in which Paramount has no interest? A. There are seven subsequent-run theatres in which Paramount has no interest.

Q. And is there competition between those theatres? A. Yes, sir.

Q. Indiana. Gary. A. Gary, Indiana, Paramount is interested in a corporation that operates two theatres, named the Grand, 600 seats, and the State, 1200 seats.

Q. Are there other first-run theatres in Gary? A. Yes, sir, there are. In the case of Gary I would say our State Theatre, although not equal in size—the competitive theatre is much larger—I think our theatre as far as appointments is just as good if not better than the competitive theatre.

Q. Now, are there other subsequent-run theatres in Gary in which Paramount has no interest? A. That is right, sir.

(1186)

Q. How many? A. Eight subsequent-run theatres in which we have no interest.

Leonard H. Goldenson—By Defendant—Direct

Q. Are all the theatres in Gary in competition? A. Yes, sir.

Q. South Bend. A. Paramount has an interest in a corporation which operates three theatres: The Colfax, 2069; the Granada, 2387, and the Palace, 2977 seats.

Q. Are they the best theatres in South Bend? A. In my opinion they are, sir.

Q. Are there subsequent-run theatres there? A. Yes, sir.

Q. Does Paramount have an interest in any of them? A. In one.

Q. How many others are there? A. There are nine others.

Q. Are all those theatres in competition? A. Yes.

Q. Des Moines, Iowa. A. In Des Moines, Iowa, we are interested in a corporation which operates the Des Moines Theatre, 1679 seats; the Paramcunt, 1708 seats, and the Roosevelt, 600 seats.

Q. Is there another theatre in Des Moines operated on a first-run policy? A. Yes, sir.

Q. And are there subsequent-run theatres in Des Moines? A. Yes, sir.

Q. In how many does Paramount have an interest? A. They have an interest in seven.

(1187)

Q. In how many does it have no interest? A. Eleven.

Q. Are all those theatres in competition? A. Yes, sir, they are; and I would say our theatres are as good as if not better than the competitive theatres.

Q. Now, New Orleans, Louisiana, what are the theatres in which Paramount has an interest? A. Paramount has an interest in the Sanger Theatre, which is 3430 seats; the Tudor, which is 710; the Globe, which is 474, and Loew's State, which is 3294.

Q. Are there other theatres operated on a first-run policy in New Orleans? A. Yes.

Q. And are there a number of subsequent-run theatres? A. Yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. How many subsequent-run theatres? A. 64.

Q. Does Paramount have any interest in them? A. They do not.

Q. And are all the theatres there in competition? A. Yes, sir.

Q. Are the first-run theatres in which Paramount has an interest there the best or comparable to the best theatres? A. In my opinion they are better than any competitive theatres.

Q. Now, Boston, Massachusetts. A. In Boston Paramount is interested in a corporation that operates the Metropolitan Theatre, 4267 seats; the Paramount, 1797 seats; the (1188)

Fenway, 1382 seats; the Scollay Square, 2542 seats, and the Olympia, 1912 seats.

Q. How many other theatres operated on a first-run policy are there in Boston? A. The records here show that there are 11 other theatres operated on a first-run policy.

Q. How do the theatres in which Paramount has an interest compare with the other theatres operated on a first-run policy? A. In my judgment the Metropolitan Theatre in Boston is the largest and best theatre in the entire New England; and the other theatres that are operated by the corporation in which Paramount has an interest are at least comparable if not better than any of the competitive theatres.

Q. Are there a number of subsequent-run theatres in Boston? A. Yes, sir.

Q. Does Paramount have an interest in some of them? A. Yes.

Q. And are there 22 in which Paramount has no interest? A. There are 22 in which Paramount has no interest.

Q. And are all the theatres in competition? A. Yes, sir.

Q. Now will you tell us about Cambridge? A. In Cambridge, Massachusetts, Paramount is interested in a corpo-

Leonard H. Goldenson—By Defendant—Direct

(1189)

ration that operates the Central Square Theatre, which has 2123 seats.

Q. Is there another somewhat smaller theatre operated on a first-run policy there? A. There is the University Theatre, which is a very nice theatre, but I think our Central Square is larger and better.

Q. Are there subsequent-run theatres in Cambridge? A. Yes.

Q. And is Paramount interested in any of them? A. Yes, they are interested in one.

Q. How many others are there? A. There are five others in which Paramount has no interest.

Q. Are all those theatres in competition? A. Yes, sir.

Q. Lowell. A. Lowell, Massachusetts: Paramount is interested in a corporation that operates the Strand Theatre, with 1637 seats, and the Merrimac Square Theatre, 1640 seats.

Q. Is there another theatre operated on a first-run policy in Lowell? A. Yes.

Q. How many subsequent-run theatres are there there? A. There are five subsequent-run theatres there in which Paramount has no interest.

Q. Are all those theatres in competition? A. Yes.

Q. New Bedford. A. New Bedford: Paramount is interested in a corporation that has the Olympia Theatre, 2472 seats. There are three competitive theatres in the town (1190)

operating on a first-run policy.

Q. How does the Olympia compare with the other theatres operated on a first-run policy? A. In my opinion it is a very much larger one than any of the other theatres, and in my opinion better located and better appointments.

Q. Now, are there subsequent-run theatres in New Bedford? A. Yes. We have one. We have an interest in the

Leonard H. Goldenson—By Defendant—Direct

corporation which operates one subsequent-run theatre, and there are six subsequent-run theatres in which we have no interest, Paramount has no interest.

Q. Are all those theatres in competition? A. Yes, sir.

Q. Somerville, Massachusetts. A. Somerville, Massachusetts: Paramount is interested in a corporation that operates the Capitol Theatre, which has 1735 seats, and the Ball Square, which has 1248 seats.

Q. Are there other theatres there operated on a first-run policy? A. There are.

Q. How do the theatres in which Paramount has an interest compare with them? A. They are very much larger and in my opinion are much better.

Q. Does Paramount have an interest in any subsequent-run theatre? A. Yes, two.

Q. Is there another subsequent-run theatre? A. Yes.

Q. Are all those theatres in competition? A. In my judgment, yes.

(1191)

Q. Springfield, Massachusetts. A. Paramount is interested in a corporation that operates two theatres, the Paramount Theatre, with 2758 seats, and the Broadway with 1765 seats.

Q. Are there five other theatres operated on a first-run policy in Springfield? A. There are, sir.

Q. How do the theatres in which Paramount has an interest compare with them? A. In my opinion the Paramount Theatre is by far the best. It is certainly the largest and in my opinion it has got the best appointments and as good if not better location than the other theatres.

Q. Now, are there subsequent-run theatres in Springfield? A. Yes, sir.

Q. In how many has Paramount an interest? A. One.

Q. And how many others are there? A. There are five others.

Leonard H. Goldenson—By Defendant—Direct

Q. Are all the theatres there in competition? A. Yes, sir.

Q. Worcester. A. In Worcester we have an interest in a corporation that operates one theatre there, the Capitol Theatre, 1884 seats.

Q. And there are four other first-run theatres in Worcester? A. Yes, sir.

Q. And how many subsequent-run theatres? A. There are five subsequent-run theatres in which we have no (1192) interest.

Q. And how does the theatre in which Paramount has an interest compare with the other first-run theatres? A. Our theatre is not as large as the two other theatres in the town named the Poli or the Elm Street, but in our opinion our theatre is comparable to in appointments and certainly I think it is a better location than any of the other theatres.

Q. Are all the theatres there in competition? A. Yes:

Q. Detroit, Michigan. A. Detroit, Michigan: We are interested in a corporation that operates four theatres. The Michigan Theatre with 4029 seats; the Broadway Capitol with 3367 seats; the Palms State with 2967 seats; the United Artists with 2018 seats.

Q. And are there several other theatres operated on a first-run policy in Detroit? A. There are three others.

Q. How do the theatres in which Paramount have an interest compare with those? A. In my opinion our theatres are comparable to the other theatres in the town. The Fox Theatre is a little larger, I think a thousand seats larger, but our Michigan Theatre in my opinion the appointments are as good if not better, and I think it as well located as the Fox Theatre.

Q. In how many subsequent-run theatres in Detroit does Paramount have an interest? A. 13: (1193)

Q. And do you know approximately how many other subsequent-run theatres there are in Detroit in which Para-

Leonard H. Goldenson—By Defendant—Direct

mount has no interest? A. Approximately 124 in which we have no interest.

Q. Are all those theatres in competition? A. Yes.

Q. Now, Flint, Michigan. A. In Flint, Michigan, we are interested in a corporation that operates four theatres: The Capitol with 1951 seats; the Palace with 1390 seats; the Garden with 917, and the Strand with 1076.

Q. Now, those theatres are owned, are they, by the Butterfield Circuit? A. They are, sir.

Q. What is the extent of Paramount's interest in the Butterfield Circuit? A. We have 25 per cent interest.

Q. How do those theatres compare with the other theatres in the town? A. Yes, they compare very favorably. As a matter of fact, they are the best theatres in the town.

Q. Now, does the Butterfield Circuit have an interest in other theatres there? A. Yes, four subsequent-run theatres.

Q. And how many in which the Butterfield Circuit has no interest? A. There are 13 other theatres in which the Butterfield Circuit has no interest.

Q. And are all those theatres in competition. A. Yes.

Q. Grand Rapids, Michigan. A. We are interested in (1194)

a corporation there that operates four theatres: The Regent, 1829 seats; the Majestic, 1135 seats; the Kent, 1081, and the Center, 872.

Q. Are those theatres also owned by the Butterfield Circuit? A. They are.

Q. Are those the best theatres in Grand Rapids? A. Yes, sir.

Q. How many subsequent-run theatres are there also owned by Butterfield? A. Six subsequent-run theatres.

Q. And how many are there in which Butterfield has no interest? A. There are 18 other theatres in Grand Rapids in which Butterfield has no interest.

Q. Are all those theatres in competition? A. Yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. Duluth, Minnesota. A. Paramount is interested in a corporation that operates four theatres in Duluth, Minnesota: The Norshore, 1209 seats; the Lyric, 1053 seats; the Garrick, 963 seats, and the Strand, 475 seats.

Q. Are there other theatres operated on a first-run policy in Duluth? A. Yes, sir.

Q. How do the theatres in which Paramount has an interest compare with the others? A. They are by far the best theatres in the town; much larger, better appointments, and better located.

Q. And are there six subsequent-run theatres in which Paramount has no interest? A. That is right.

(1195)

Q. Are all those theatres in competition? A. Yes, sir.

Q. Minneapolis. A. Minneapolis, Paramount has an interest in a corporation that operates seven first-run theatres: The Radio City, 4013 seats; the State, 2288 seats; the Century, 1632 seats; the Lyric, 1078 seats; the Gopher, 1028 seats; the Aster, 797 seats, and the Orpheum, 2832 seats.

Q. Are there any other theatres regularly operated on a first-run policy in Minneapolis? A. Yes. There is the World which operates on a policy I think of foreign films.

Q. A much smaller theatre? A. Yes.

(1196)

Q. And are there other subsequent-run theatres in which Paramount has some interest? A. Yes, eight.

Q. How many are there in which Paramount has no interest? A. 45.

Q. Are all the theatres there in competition? A. Yes, sir.

Q. St. Paul. A. In St. Paul, Paramount has an interest in a corporation that operates 5 theatres, the Paramount, 2362 seats; Riviera, 1268 seats; Strand, 755 seats; Tower, 1046 seats; and the Orpheum, 2183 seats.

Q. Is there another theatre there which shows some pictures first-run? A. Yes, I think the World.

Leonard H. Goldenson—By Defendant—Direct

Q. Is that also largely engaged in showing foreign films?

A. I believe so, yes.

Q. Are there some subsequent-run theatres in St. Paul in which Paramount has an interest? A. There are five in which we have an interest and there are 31 in which we have no interest.

Q. Would you say all the theatres there are in competition? A. Yes, sir.

Q. Kansas City, Missouri. A. Paramount is interested in a corporation that operates the Newman theatre, 1914 seats.

Q. How many other theatres operated on a first-run policy are there in Kansas City? A. I believe there are seven.

(1197)

Q. How does the Newman Theatre compare with the other theatres operated on a first-run policy? A. I don't think the Newman Theatre is as large, but I think it is the best located theatre in Kansas City. I am certain that the appointments are comparable with the best.

Q. Does Paramount have an interest in any subsequent run theatres in Kansas City? A. They do not.

Q. How many other subsequent run theatres are there? A. 56 subsequent run theatres in which we have no interest.

Q. Are all the theatres there in competition? A. Yes.

Q. Omaha, Nebraska. A. Paramount is interested in a corporation which operates three theatres, namely, the Omaha, 2500; the Orpheum, 2975; the Paramount, 2750.

Q. Is there another theatre operated on a first-run policy in Omaha? A. Yes.

Q. How do the theatres in which Paramount has an interest compare with that? A. They are by far larger. Their appointments are in my opinion as good, if not better, and I think they are better located.

Leonard H. Goldenson—By Defendant—Direct

Q. Does Paramount have any interest in any subsequent-run theatre? A. No.

Q. How many other subsequent-run theatres are there? A. 25.

Q. Are all the theatres there in competition? A. Yes. (1198)

Q. Newark, New Jersey. A. We have an interest in a corporation that operates two theatres, the Paramount, 2000 seats, and the Adams, 1917 seats.

Q. Are there several other theatres operated on a first-run policy in Newark? A. Yes, there are three others.

Q. How do the theatres of Paramount compare with them? A. Our seating capacity is not as large as the other three but I think the appointments are at least as good, if not better, and I think the location is as good if not better than the other theatres in town.

Q. Does Paramount have an interest in any subsequent-run theatres in Newark? A. They do not.

Q. How many subsequent-run theatres are there? A. 46 others.

Q. Are all those theatres in competition? A. Yes.

Q. Paterson, New Jersey. A. We are interested in a corporation that operates the United States Theatres, 1487 seats.

Q. Are there four other theatres operated on a first-run policy there? A. There are.

Q. How does the theatre in which Paramount has an interest compare with them? A. I do not think it is as large as two other theatres, but I think it is comparable in quality as well as location.

Q. Does Paramount have any interest in subsequent-run theatres there? A. No, sir, it does not. (1199)

Q. How many others are there? A. There are five subsequent-run theatres, which we have no interest.

Leonard H. Goldenson—By Defendant—Direct

Q. Are all the theatres there in competition? A. Yes.

Q. Buffalo. A. In Buffalo, New York, we are interested in a corporation which operates three theatres there, namely, the Buffalo, the Great Lakes and the Hippodrome. The Buffalo has 3489 seats; the Great Lakes 3028 seats, and the Hippodrome 2089 seats.

Q. Are there other first-run theatres in Buffalo? A. Yes, sir.

Q. And how do the theatres in which Paramount has an interest compare with them? A. Our theatres are by far the largest, and in my opinion the appointments are as good if not better and certainly as well located as any other theatre.

Q. Does Paramount have any interest in subsequent-run theatres in Buffalo? A. They do, sir.

Q. How many? A. Six.

Q. How many other subsequent-run theatres are there in Buffalo? A. There are 49 others.

Q. Are all the theatres there in competition? A. Yes.

Q. Brooklyn. A. In Brooklyn we have an interest in a corporation that operates three theatres, the Paramount with 4156 seats; the Strand with 2911, and the Fox with (1200) 4060.

Q. Are there other theatres operated on a first-run policy there? A. Yes, sir.

Q. How do the theatres in which Paramount has an interest compare with them? A. The Paramount and Fox are by far much larger. I think the appointments are as good if not better than their competitors.

Q. Are all those theatres in competition? A. Yes, sir.

Q. Manhattan, New York. How many first-run theatres in Manhattan does Paramount have an interest in? A. Paramount is interested in corporations which have two theatres in New York, the Paramount with 3664 seats, and the Rivoli with 2092 seats.

Leonard H. Goldenson—By Defendant—Direct

Q. Are there some 15 or so other theatres operated on a first-run policy in Manhattan? A. Right.

Q. Are there a number of subsequent-run theatres? A. Yes, sir.

Q. Does Paramount have any interest in any of the subsequent-run theatres? A. They do not.

Q. Are all the theatres in and around Greater New York in competition? A. They are, sir.

Q. I should say in Manhattan and Brooklyn, that is? A. Yes. Well, the theatres you mention are just Manhattan. I assume that is what you mean.

Q. Rochester, New York. A. In Rochester, New York, (1201)

we are interested in a corporation that operates four theatres, the Century with 2250 seats; the Regent with 1600 seats; the Palace with 3000 seats, and the Temple with 1000 seats.

Q. Is there another theatre in Rochester operated on a first-run policy? A. Yes.

Q. How do the theatres in which Paramount has an interest compare with it? A. Not as large as the opposition theatre but I believe as good in appointments, certainly, and well located.

Q. Does Paramount have an interest in any subsequent-run theatre in Rochester? A. One.

Q. How many others are there? A. There are 32 subsequent-run theatres.

Q. Are all those theatres in competition? A. Yes, sir.

Q. Yonkers. A. We are interested in a corporation that operates two theatres, namely, the Proctor's, which is—no, I beg your pardon. The other one is a subsequent-run. You want only the first-run.

Q. That is right. A. One theatre, Proctor's, which has 2043 seats.

Q. Is there another theatre operated on a first-run policy there? A. Yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. Which one has the first-run of Paramount's product?

A. I believe Loew's have the first-run of Paramount product. (1202)

Q. Does Paramount have an interest in one subsequent-run theatre? A. Yes.

Q. Are there eight others? A. Yes.

Q. Are all those theatres in competition? A. Yes, sir.

Q. Charlotte, North Carolina. A. In Charlotte, Paramount is interested in a corporation that operates four theatres there, the Carolina with 1450 seats; the Imperial with 946 seats; the Broadway with 1103 seats, and the State with 645 seats.

Q. Are those the best theatres in Charlotte? A. Yes.

Q. Are there any other theatres comparable with them?

A. No, sir.

Q. Is Paramount interested in one subsequent-run theatre there? A. Yes, sir.

Q. How many other subsequent-run theatres are there there? A. There are seven subsequent-run theatres in which we have no interest.

Q. Are all those theatres in competition? A. Yes.

Q. Toledo, Ohio. A. In Toledo, Ohio, we are interested in a corporation that operates two theatres, the Paramount with 3408 seats, and the Princess with 940 seats.

Q. How many other theatres operate on a first-run policy there? A. Five other theatres.

Q. How do the theatres in which Paramount has an interest compare with them? A. Our Paramount Theatre by (1203)

far is the largest and the best theatre in Toledo.

Q. Paramount is not interested in any subsequent-run theatre there? A. No, sir.

Q. How many subsequent-run theatres are there? A. 21.

Q. Are all the theatres there in competition? A. Yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. Oklahoma City. A. In Oklahoma City, Paramount is interested in a corporation that operates five theatres first run, the Critèrion with 1397 seats, the Tower with 919 seats, the Midwest with 1474 seats, the Liberty with 1308 seats, and the Warner with 1849 seats.

Q. Is there another theatre there operated on a first-run policy. A. Yes, sir.

Q. How do those theatres in which Paramount has an interest compare with the other theatre. A. In my opinion they are bigger, better, finer appointments, and better located.

Q. Does Paramount also have an interest in five subsequent-run theatres? A. Yes, sir.

Q. How many other subsequent-run theatres are there? A. There are 18 other subsequent-run theatres in Oklahoma City.

Q. Are all those theatres in competition? A. Yes; sir.

Q. Scranton, Pennsylvania. A. In Scranton, Pennsylvania, we are interested in a corporation that operates four (1204)

theatres, namely, the Strand with 1542 seats; the Comerford with 1600 seats; the State with 920 seats, and the Capitol with 1770 seats.

Q. Are those the best theatres in Scranton? A. Yes.

Q. Is Paramount also interested in some subsequent-run theatres there? A. Yes, we have an interest in seven subsequent-run theatres.

Q. How many other subsequent-run theatres are there? A. There are four others in which we have no interest.

Q. Are the Scranton theatres owned by the Comerford Circuit? A. Yes, sir.

Q. What is the extent of Paramount's interest in the Scranton theatres? A. We have a 50 per cent interest in the common stock. The preferred stock is owned by Mr. Frank Walker, M. E. Comerford, and M. B. Comerford Estate—

Leonard H. Goldenson—By Defendant—Direct

they are both estates, and Frank Walker is living, and they have an A preferred stock and until that is paid off they have a majority of the board of directors.

Q. Chattanooga, Tennessee. A. We have an interest in a corporation that operates three theatres, the Tivoli with 1781 seats, the State with 856 seats, and the Rialto with 800 seats.

Q. Are those the best theatres in Chattanooga? A. Yes, sir, by far.

Q. How many subsequent-run theatres are there? A. (1205)

There are 12 subsequent-run theatres.

Q. Does Paramount have any interest in them? A. They do not.

Q. Are all the theatres there in competition? A. Yes, sir.

Q. Knoxville, Tennessee. A. Knoxville, Tennessee, we are interested in a corporation that operates three theatres, the Tennessee with 1996 seats, the Riviera with 1012 seats, and the Strand with 799 seats.

Q. Are those the best theatres in Knoxville? A. In my opinion they are by far the best.

Q. Does Paramount have some interest in subsequent-run theatres there, and, if so, how many? A. Five subsequent-run theatres.

Q. How many other subsequent-run theatres are there? A. There are nine other subsequent-run theatres in which we have no interest.

(1206)

Q. How about Memphis? A. In Memphis we own 50 per cent of the stock of the corporation that operates there. Mr. M. A. Likeman is the theatre operator.

Q. Will you go through these Texas cities? Dallas. A. In Dallas, Paramount is interested in a corporation that operates six first-run theatres, six theatres in which there is

Leonard H. Goldenson—By Defendant—Direct

a first-run policy, The Majestic with 2,415 seats, the Palace with 2,332 seats, the Melba with 1,841 seats, the Tower with 1,295 seats, the Rialto with 1,332 seats, the Capitol with 1,052 seats.

Q. How do those theatres compare with the other theatres in Dallas? A. By far the largest and the best.

Q. And is Paramount also interested in 11 subsequent-run theatres there? A. They are, sir.

Q. How many other subsequent-run theatres are there? A. There are 29 other subsequent-run theatres in which we have no interest.

Q. Who operates the theatres in Dallas? A. Karl Hobbizelle and Robert J. O'Donnell. They own 50 per cent of the stock of the corporation operating these theatres and Paramount owns the other 50 per cent.

Q. Fort Worth. A. We are interested in a corporation that operates three theatres, the Worth, with 2,358 seats, the Hollywood, with 1,700 seats, and the Palace with 1,468 seats. (1207)

Q. And how do those theatres compare with the other theatres in Fort Worth? A. By far the biggest and the best.

Q. Is Paramount also interested in some subsequent-run theatres there? A. They are.

Q. How many? A. Nine.

Q. How many others are there there? A. 13 in which we have no interest.

Q. Are the Fort Worth theatres also operated in the same way as the Dallas theatres? A. Yes, sir.

Q. Houston. A. In Houston we have an interest in a corporation that operates four theatres operated on a first-run policy, namely, the Majestic with 2,081 seats, the Metropolitan with 2,320 seats, and the Kirby with 1,464 seats, and the Iris with 1,069 seats.

Q. Is there another theatre operated on a first-run policy in Houston? A. Yes, sir.

Leonard H. Goldenson—By Defendant—Direct

Q. How do the theatres in which Paramount has an interest compare with it? A. The Majestic and Metropolitan, in my opinion, are not quite as large as the competitive theatre, but, in my opinion, as good, if not better as far as appointments and location.

Q. Does Paramount have some interest in subsequent-run theatres there? A. Yes, sir.

Q. How many? A. 16.

Q. How many others are there? A. There are 27 others (1208) in which we have no interest.

Q. Are the Houston theatres also operated on the same basis as the other theatres? A. By Mr. Hoblitzelle and Mr. O'Donnell.

Q. And Paramount's interest is 50 per cent. San Antonio. A. In San Antonio Paramount is interested in a corporation that operates four theatres on a first-run policy, namely, the Majestic with 3703 seats, the Aztec with 2433 seats, the Texas with 2752 seats, and the Empire with 1497 seats.

Q. Are those the best theatres in San Antonio? A. In my opinion by far they are the best theatres.

Q. Does Paramount have some interest in subsequent-run theatres there? A. Yes; 11 subsequent-run theatres.

Q. Are there other subsequent-run theatres there? A. There are eight other subsequent-run theatres.

Q. Salt Lake City, Utah? A. In Salt Lake City we are interested in a corporation that operates four theatres on a first-run policy, the Utah, with 1823 seats, the Centre with 1627 seats, the Capitol with 1200, and the Studio with 350 seats.

Q. Are there other theatres in Salt Lake City operated on a first-run policy? A. Right.

Q. How many? A. There are four.

Leonard H. Goldenson—By Defendant—Direct

Q. Does Paramount have any interest in subsequent-run (1209)

theatres there? A. They do not—wait a minute. We have one that is a subsequent-run theatre.

Q. Are there other subsequent-run theatres there? A. Yes, there are seven other subsequent-run theatres in which we have no interest.

Q. Are all those theatres in competition? A. Yes, sir.

Q. I have asked you about whether these theatres in various cities were in competition, and I want to be clear as to the sense in which you used that. Are all motion picture theatres in a general area in competition? A. In my opinion they are, yes, sir.

Q. In what sense? A. In the sense that when a patron decides to go to a place of amusement, he or she has a choice. They can go to a theatre in a downtown area that is on a first-run policy, where the admission price is high and where they have an opportunity of seeing the picture first. Generally speaking, that theatre is much larger than any other theatre in town and its appointments are much better.

Or they have a choice of waiting 28 days, or whatever the clearance happens to be in a given situation, and going to the next house where the admission price may be only 50 cents, where the appointments in the theatre are very good, very nice, might be in their particular neighborhood and they might not want to go downtown. Or they can wait until it gets into the next subsequent-run house, which may (1210)

be 35 cents, where the house won't be as large as the two previous houses, where the appointments may be not quite as good, but yet be very nice, where they have everything that the first-run theatre has except that they do not have the, possibly, the size, as I said, and do not have, maybe, the fine appointments. Or they can wait for another subse-

Leonard H. Goldenison—By Defendant—Direct

quent run, I mean, go to another subsequent-run where the admission prices are 25 cents.

So that a patron going to seek amusement can go to a cross-section of any type of theatre at any price that will fit their pocketbook on that particular evening, or any program that will fit their taste that particular evening. There may be a picture playing in a first-run situation that has a star they don't like, or probably a story or picture they don't like, so they may, though they want to go to the first-run, they may decide to go to another one.

So you are always in competition, and every theatre, in my opinion, is always in competition with every other theatre for that particular patronage.

Q. Is there in your experience a segment of the population which is a separate, first-run market? A. I don't think so. I don't think so at all. As a matter of fact, I would say the depression—the period in which we rode through the depression—proved anything but that. Where people did (1211)

not have the money in their pockets, the subsequent-run theatres did a greater business in proportion than any other theatres, because people were waiting to get it at a cheaper price. They could not afford to pay the higher prices. As a matter of fact, most of the theatres that went into bankruptcy during the depression period—my experience, I remember,—were first-run theatres, because they had terrifically high costs, they had many millions of dollars in these first-run theatres, because they built luxurious palaces for the tastes of the people, but the people didn't have the money during that period. So the subsequent-run theatres benefited.

Q. My brother Phillips asked me to ask you whether there aren't many subsequent-run theatres with admission prices under 25 cents? A. Oh, yes, they are run as low as ten cents, I believe.

Leonard H. Goldenison—By Defendant—Direct

Q. Dealing generally with the cities under 100,000, are you generally familiar with the quality of the theatres in which Paramount has an interest in those cities? A. Yes, I am, generally speaking.

Q. Would you say that the theatres in which Paramount has an interest in those cities, operated on a first-run policy, were the best or comparable to the best theatres in those localities? A. That would be my judgment.

Q. Do the theatre-operating companies in which Paramount (1212)

mount has an interest make a consistent effort to keep their theatres up? A. They do, sir. We spend a tremendous sum of money. I know I have to approve each year a tremendous sum of money for expenditures on those theatres, and it has been, I know, the policy of these theatre operators, who are operating these theatres, to want to keep their theatres ahead of the standard of the times, because, generally speaking, you will find that in small towns today merchants and everybody are alert to constant changing of construction and maintenance of properties, and our people, being in the local areas, can judge how the merchants are improving their store fronts and their places of business. So our people want to do the same with respect to their theatres and, as a consequence, we spend millions of dollars a year in maintenance of those theatres.

Q. For example, is air conditioning installed in many of those theatres? A. I think by far the vast majority of our theatres have air conditioning.

Q. The distinguished counsel for the Government read into the record one day week before last the names of a number of towns having population of 25,000 or less, in which he stated that Paramount was interested in all the theatres in each of those towns. Some of those towns had a population of under a thousand, some of them were up close to

Leonard H. Goldenson—By Defendant—Direct

twenty-five thousand. Do you know whether in many of (1213)

those towns there is only one theatre? A. Yes.

Q. And in others there are only two theatres? A. Yes, sir.

Q. And in others, in a few others, there are more than two theatres? A. That is right, sir.

Q. Is there any rough gauge by which one can approximate about how many theatres a town can support? A. I couldn't do it on the basis of theatres, but I could do it on the number of seats in a town.

Q. Is there any rough gauge for that? A. Yes. Generally there has grown up in the business a formula that there generally should be one seat for every ten people living in the town. There are exceptions to that, of course. Say a town is a good show town, they would want to have a greater ratio of seats to patrons because the people have a tendency to want to go to pictures more often. If it is a poor show town, your ratio may be different, it may be 1 to 15 or 1 to 20.

You have situations in some towns, such as are called summer towns or winter towns, where the people go for vacations. There you have got to keep off season a lot of extra seats in order to accommodate during the season the number of people that flow into those towns.

You have your large metropolitan areas throughout the United States where the people like to trade in those metro- (1214)

politan areas, so when they come to town, they get tired in the evening, and they like to go to the moving pictures, and so, as a result, you have to have, perhaps, there a larger ratio of seats to the patrons than you would in a small town, as an example, where the patrons are drawn out of small towns, to go to the larger trading area, so certain small towns need a lesser number of seats to the total number of patrons.

Leonard H. Goldenson—By Defendant—Cross

But by and far we use the standard of 1 to 10, and then we have to use the exceptions for areas in a given situation, and I think people that have been years in the business can determine that pretty well. You know what towns are good and what are bad.

Q. There are all kinds of variations depending upon the locality as to how many theatres the town can support, but if there is a town of, say, 5,000, just a typical town with no special qualities one way or the other, and it has one theatre with 500 seats, is it likely that that town would provide a comfortable income to another theatre? A. I wouldn't think so. I would—certainly from an economic standpoint—would not want to do it myself.

Q. Are there some towns in the group that the Government read in which are in the South? A. Oh, I think, as I remember correctly—I went over the list the other day—I think a lot of them are in the South—the greater proportion (1215) of them were.

Mr. Seymour: You may examine, Mr. Wright.

Mr. Frohlich: I should like to ask a few questions.

Cross-Examination by Mr. Frohlich:

Q. Mr. Goldenson, what is the Florida Theatres, Inc.?

A. Florida Theatres, Inc. is a corporation, the stock of which Paramount owns 100 per cent, in Florida.

Q. That is known as the Sparks Circuit? A. Formerly was the Sparks Circuit. Paramount bought out Sparks' interest.

Q. And did the Paramount have an interest in this Sparks Circuit as far back as 1936? A. Paramount has had an interest in that circuit since 1933, that I know, when I came into Paramount. I do not know how much before that.

Q. You testified a little while ago that down south they have colored theatres and white theatres. A. They do, sir. Not always, but sometimes.

Leonard H. Goldenson—By Defendant—Cross

Q. In many of the states? A. Many towns.

Q. That is true in Florida, isn't it? A. I think so.

Q. There has been put in evidence in this case a contract for the exhibition of Columbia Pictures Corporation pictures signed by the Florida Theatres, Inc. on December 1, 1943. It is Exhibit No. 267. I will show you this exhibit and ask you (1216)

to be good enough to look at the list of 43 theatres which are covered by that contract, and tell us, if you please, which of those cities named in that group contain only one theatre.

A. Well, Arcadia, Florida, contains one theatre; Bartow contains two; Bradentown contains two; Clearwater, two; Cocoa, one; Daytona Beach, I think about five; Deland contains one; Delray Beach contains one; Dania, one; Eau Gallie, one; Eustis, one; Fort Lauderdale, five; Fort Myers, three; Fort Pierce, one; Fort Pierce, I think, has a new theatre building—no, I think Fort Pierce has only one; Gainesville, three; Hollywood, two; Jacksonville I have already mentioned in my testimony; Jacksonville Beach, we don't have an interest in the operation, but there is one at Jacksonville Beach; Lakeland has one; Lake Worth has two; Melbourne, one; Mt. Dora, one; New Smyrna, one; Ocala, three; Orlando has about five; Lake Wales has two; Palatka, two theatres in town Palm Beach has two theatres; Palmetto has, I think, three theatres there; Plant City, two theatres; St. Augustin, two; St. Petersburg, approximately six or seven; Sanford, two; Sarasota has two; Stuart has one; Tallahassee, three; Tampa has about, I would say, ten—I am guessing on Tampa; West Palm Beach, I think, has about five; West Tampa, we don't operate there, so I couldn't (1217)

tell you; Winter Haven has two; Winter Park has one; Ybor Beach, one; Ybor City, three. Paramount has no interest in Ybor City. In addition to that, there are certain colored theatres operated in these towns which I know nothing

Leonard H. Goldenson—By Defendant—Cross

about, in the sense that we do not operate any in these towns, so I cannot answer that problem, but I am talking about the theatres here.

Q. Isn't it true that in 37 of these 43 cities you have just mentioned, Sparks Circuit owns all of the theatres in the town? A. That is not so. /

Q. Well, how, in what respect am I wrong? In how many towns does the Sparks Theatres own all of the theatres? A. I would say 32.

Q. So that any distributor who wants to show his pictures in 32 of these cities would have to make a contract with the Sparks Circuit? A. In 32 of the cities, yes.

Q. Does Sparks own any theatres in Miami or Miami Beach? A. Yes, Florida Paramount Enterprises does.

Mr. Seymour: Would anybody else like to ask any questions? Otherwise I am through, Mr. Wright.

(1218)

Cross Examination by Mr. Wright:

Q. Mr. Goldenson, in giving this testimony about first-run theatres, how did you use the term? A. The theatres operating presently on a first-run policy.

Q. By a first-run policy you mean exhibition of what product on first-run? A. I would say pictures of all distributors that are available in the given area for the first-run showing.

Q. Did you in your testimony classify as first-run theatres which had no regular first-run of major product? A. I may have. I will go over the list and tell you specifically, sir.

Q. Can you name any particular theatres that fall in that category? A. Of course, I would like to know what you mean by first class product. The P. R. C., who release their pictures, every picture that they have is called a first class product.

Leonard H. Goldenson—By Defendant—Cross

Q. I said major product. A. What do you mean by major product?

Q. I take it as the term is understood in the trade, to mean product released by one or more of these defendants, does it not? A. Well, I don't know. If you will tell me what it is, then I can answer it better. Is that what you mean?

Q. What does "major product" mean as it is used in (1219)

the trade in your experience? A. I would say any product that is sufficient to play in good theatres, yes, would be a major product.

Q. For the most part that is the produce released by the eight defendants in this case? A. I think so. I generally think so, although the Republic and a few other distributors have come along in recent years and, in my opinion, are making much better pictures than they ever have.

Q. How many would you say that Republic released during 1943-1944 that you exhibited in your key first-run theatres? A. Oh, I would say five or six, probably.

Q. Five or six pictures? A. I would think so.

Q. In your first-run, key first-run theatres? A. Yes.

Q. Can you name them? A. Not offhand. I will check it and give it to you, sir.

Q. And Monogram? A. Monogram has had, I would say, about four or five this last year, "Dillinger" or "These Are Your Children." I know of two others I cannot think of the title; say possibly four or five.

Q. In the 1943-1944 season? A. Oh, 1943-1944 season? No, I would have to check back for the 1943-1944 season. I gave you 1944-1945.

Q. And P. R. C.? A. I will check the records and see. Very simple.

Q. So in your classification then you have included what (1220)

you call opposition first-run theatres, theatres which had no

Leonard H. Goldenson—By Defendant—Cross

regular run on first-run product other than let us say Republic or Monogram or P.R.C., is that right? A. There may be a few included of that nature, but, generally, the opposition theatres that I set forth here played the products of—certain major companies' products.

Q. Can you give me the names of those that fall within the P.R.C., Republic and Monogram class, names and locations of those? A. When you say that you want to have the names, do you want me to pick out a theatre that is competitive theatre and eliminate the other competitive theatres?

Q. No, I just want to know the names and locations of the theatres you have described as opposition or competitive first-runs, who had only a regular first-run of the product of one or two or all three of those companies. A. I would say this, if that is what you wish, I will go back and give them to you. In Hartford, the Poli; the Palace, Strand and Regal, and E. M. Loew's operating the theatres, operates with major companies' products. The State Theatre has Monogram, P.R.C. and Republic, as I see it here.

Q. If you have them on the chart, can we just have the chart marked, and that will take care of it? A. Yes, I think that would be the simplest way.

(1221)

Mr. Wright: Would you mark that with the next plaintiff's number?

Mr. Seymour: I think it ought to be said that that chart does not include product which is playing in theatres in which Paramount has an interest. Only the product that played in the other first-run theatres:

Mr. Wright: I understand that.

Mr. Seymour: Of course, that is only in the 48 cities about which I examined Mr. Goldenson.

Mr. Wright: Surely.

(Marked Government's Exhibit 377 for identification.)

Leonard H. Goldenson—By Defendant—Cross

Q. This chart, I take it, also contains a statement of foreign pictures only wherever the theatre that you have treated as a first-run theatre shows only foreign pictures, is that right? A. I think they put an asterisk on the two theatres I referred to as exhibiting only foreign pictures and there may be a statement that that is so.

Q. Those are the only ones that you indicated? A. I think so. That is, the only ones that are marked, and I am talking from memory when I say that is so. They may be running other first-run pictures which at the moment I am not aware of.

Q. This chart, does this make any attempt to indicate which of the so-called competitor first-runs are independently operated and which are operated by affiliates? A. I think (1222)

it does but I am not sure. I didn't notice that particularly.

Mr. Seymour: It is just a memorandum to refresh the witness's recollection.

Mr. Wright: We will offer the chart.

—Mr. Caskey: Objected to as far as containing any information as to theatres operated by National. That has been put in. We have never seen this. It purports to give seating capacities and pictures played in our theatres.

(Government's exhibit 377 for identification received in evidence.)

(1223)

Q. I will hand the chart back to you and ask you to just indicate or name the first-run theatres listed on there which you regard as independently operated. A. As independently operated?

Q. Yes. A. In Birmingham, Alabama, the Empire, the Galax and the Royal are independently operated.

Q. Well, just take whatever ones there are all the way down. A. In Hollywood and Los Angeles, California, I

Leonard H. Goldenson—By Defendant—Cross

regard the Hawaii, Hollywood Music Hall, the Tower, the Elite, the California, Esquire and Grand as independently operated.

Mr. Seymour: Let us define that term. You mean by that, Mr. Wright, operated by somebody who is not a defendant in this case or affiliated with any of the defendants?

Mr. Wright: That is right, not a defendant or affiliated with one of the defendants in the suit.

The Witness: Well, I heard here in the testimony United Artists had an interest. I thought Blumenfeld operated those four theatres, but if you mean United Artists as one, you mean to eliminate that? I don't know.

Q. Well, I really want to get your best information as to which, if any, of the first-runs that you have on the list are operated by interests which are not affiliated with one of the defendants in the suit, that is all.

(1224)

A. Well, in San Francisco, the Esquire, United Artists and Orpheum.

Q. Are these Blumenfeld theatres? A. Blumenfeld theatres.

In Hartford, Connecticut, the State and E. M. Loew's Theatre.

In New Haven—nothing in New Haven.

In Jacksonville, St. Johns.

In Miami, the Capitol and Miami.

In Tampa, the State.

In Atlanta, the Rialto, the Cameo.

In Chicago, the Wood's, the Oriental.

In Gary, Indiana, the Palace and the Gary.

Judge Bright: These are all independent?

Leonard H. Goldenson—By Defendant—Cross

The Witness: These are independents, no affiliation with the defendants.

In New Orleans, I understand the St. Charles is operated by Harry Brandt, which is an independent. By the way, that is not on this chart. I notice that they have left it off, but I understand that the St. Charles is operated by Harry Brandt, an independent.

Q. Is that something new that has developed? A. I think he took it over a few months ago. They must have left it off this chart.

Q. I meant you to confine your answers to what you have (1225) on the chart there so we can see from your answers what the independent theatres had in the way of product. A. All right. Now, in Boston: The Majestic, the Tremont, the Gayety; The Translux, which is, I believe, called the Park—was called the Park; they may have changed it to Translux; the Laff Movie.

Q. Who is the independent that operates those? A. I think that Lieberman and Brandt work or have some kind of an arrangement between the Majestic, the Tremont and the Normandy, but I don't know whether they are joint operators or whether they are individual operators; I don't exactly know; and the Translux is operated by Dave Stoneman and his son Harold Stoneman.

Q. Is that a newsreel theatre? A. No. It was a newsreel, but they operate on a first-run policy, what are known as action pictures.

Now, the Gayety I think is a "sensational" house that operates first-run sensational pictures. I think E. M. Loew operates that.

Q. What do you mean by sensational pictures? A. Oh, you get certain pictures that are blown up, as "Why Children

Leonard H. Goldenson—By Defendant—Cross

Leave Home," and that type of picture, generally speaking, that by innuendo there is an inference—

Q. You mean sex pictures? A. Well, I would say that, yes.

(1226)

Q. Any others? A. That is all there.

In Cambridge, the University Theatre. That is operated by an independent.

Q. The University, I take it, has what you call a mixed policy? A. They have a mixed policy. They play Warner's, half of RKO, Universal, Columbia and United Artists first-run at Cambridge.

Q. They play some second-run? A. Yes. I think we have to once in a while in some situations where we do not have enough product. That is not unusual if there is a shortage of product.

Q. Go ahead. A. New Bedford: The Empire, the State and the New Bedford, that is operated by a Mr. Zeitz. By the way, the names of these independents are not on here. I am just reciting those by memory, you understand.

Q. I understand. A. Because you said to repeat what is on here.

Q. I merely wanted you to confine yourself to the theatres that are listed here. A. All right. Then the Broadway, the Teele Square and the Somerville theatres in Somerville.

Q. Who has those? A. Wait a minute. I will think of his name.

I can't offhand think of it, but it is an independent.

(1227)

In Springfield: The Bijou and the Court Square is E. M. Loew's; those are two.

In Worcester: The Plymouth.

In Detroit the Adams—I mean the Downtown and Adams, or maybe it is only the Downtown. I don't know if Fox has an interest in the Adams Theatre in Detroit or not.

Leonard H. Goldenson—By Defendant—Cross

If they do, that is excluded. If they do not, they are both independent.

In Duluth: The Granada and the Lake.

In Minneapolis I think I have already mentioned the World on foreign pictures, and in St. Paul, the same thing.

In Buffalo the Twentieth Century and the Lafayette. I think Basil operates the Twentieth Century and Max Yellen—Max Yellen operates the Century and Basil operates the Lafayette.

In New York—that is Brooklyn—no, I mean in Manhattan, I beg your pardon. In Manhattan, well, there is the Victoria, the New York, the Central, the Rialto, the Astor—wait a minute. Would you consider Mr. Sam Goldwyn a part of these defendants?

Q. No. A. Mr. Selznick a part of these defendants?

Q. No. A. They operate this theatre. Radio City Music Hall.
(1228)

Rochester, no.

Toledo: The Granada and the Esquire.

Q. Who has those? A. As I remember, Jack Skirball has that—not Jack Skirball; his brother;—I forget his name.

In Oklahoma City, the State. Dent operates that.

In Salt Lake City, the Uptown, the Rialto, State and Lyric.

Q. Is that all there are? A. That is right.

Q. And then, I take it, wherever in your testimony you did not refer to any other first-run theatres at all, that means there are no first-runs there other than those in which Paramount is interested; is that right? A. There are no other first-run theatres that the defendants in this case are interested. You asked me that—as I understood it, what you wanted was the opposition theatres except those that the defendants were interested in.

Leonard H. Goldenson—By Defendant—Cross

Q. I am not referring to the testimony you just gave on cross-examination. I am referring to your testimony on direct examination where in certain instances you did not say anything about whether there was any other first-run theatres or not. Now, in those instances where you did not mention the existence of other first-run theatres, the only first-run theatres in town were those in which Paramount (1229)

was interested, isn't that so? A. That is right, sir.

Q. Now, when you compared these theatres and compared them in groups, you meant, did you, that the theatres in which Paramount had an interest collectively considered were better than other theatres in the town? A. No. What I did was, I took the best theatre that was in the town and compared it with the best theatre that we had in the town, and on that basis made the comparison.

Q. Now, on these reports, this Exhibit P-4 of the defendants, this, as I understand it, is the report that you sent out to the theatres in which Paramount is interested as to how pictures of other distributors did in your theatres. That merely says "Sections of U.S.A. Played"; then "East", "Middlewest" and "Southwest" and it gives general areas. Those reports do not come in to you in the same general terms as that, do they? A. No. They come in from, say, five or six geographical areas. The picture opens in a theatre, and each of the managers of those theatres will send that report in without saying what theatres it played in. The report goes back out to the field showing that that particular area has played the picture.

Q. Well, the report he sends in shows what? A. Shows everything but the area, and whether it did above average (1230)

or below average or fair or good business.

Leonard H. Goldenson—By Defendant—Cross

Q. Well, it names the theatres involved, does it? A. I presume that in some cases it does and in some cases it does not, for the reason that when it comes in the probabilities are that we know that it has only played in one spot in that area, and he would not have to say so; but generally I imagine it does, yes.

Q. Then in addition to these reports which you receive and then send out in this form marked P-4, as I understand it you receive—what is it, daily or weekly— A. No, we get that sometimes a week or two after the picture has opened in a given house, and the manager has had a chance to talk to the patrons as to their reaction to the picture, what their reaction to the picture was; they talk to various cross-sections of people, and they get their reaction, and then assemble his advertising material so as they can see in there what type of advertising campaign he will use.

Q. Now, will you let me finish my question before you give the answer? I say, in addition to this report, the reports which come in and go out in this form P-4, you, as I understand it, receive daily or weekly reports of the actual receipts and expenses including film rental of the theatres in which Paramount is interested? Those are different reports? A. You are confusing two things. We get a daily (1231)

telegraphic report, which I think was put in here this morning. In addition to that we get a weekly report, an audit report of all the items of expense in a given theatre, its gross and its P and L, which go to our theatre auditing department for verification.

Q. Have you got a copy of the form of report that you get that information on? A. It can be furnished to you. If it is not here I am sure that Mr. Seymour can take care of it.

Q. And that you get weekly? A. Yes, sir, that is right.

Q. From all of the theatres in which you have an interest? A. Yes.

Leonard H. Goldenson—By Defendant—Cross

Q. Now, as to those theatres or as to the compensation for these services that you render to those theatres in which you have an interest,—how is that handled? How is Paramount compensated for the services you rendered? A. Back in the reorganization days, at the time that the trustees decentralized these operations, they set up maybe a flat amount. I believe our New England theatres send in \$200 a week, and maybe another circuit sends in \$300 a week; but it is on a non-profit basis. They try to estimate what the cost of these services is in the home office, and that is what they pay for it. I mean, there is no set basis. It just happened to be arbitrary amounts at that time, I suppose what the trustees and (1232) their advisers thought could be set up, and it has been continued virtually ever since.

Q. Well, it bears in most cases, does it not, a fairly close relation to a fixed proportion of the gross receipts? A. No, it does not, sir, because all of them are flat rentals. By flat rentals I mean it is just a flat sum that the trustees agreed on at the time.

Q. Well, that is done pursuant to a contract between Paramount and these people? A. That is right.

Q. Have you got a form of that contract? A. I am sure that that can be furnished if it has not been.

Q. And all of these people that you refer to as local operators is each himself the operator of quite a substantial circuit of theatres, isn't that right? A. Not in every case. We have varying situations. In Newark we have a man by the name of Adam Adams who operates the Paramount Theatre in Newark and the U. S. Theatre in Paterson. In Ogden, Utah, we have an associate, a local theatre operator, who operates only in Ogden, Utah. He happens to operate two theatres there. In other words, it is varying. Some have larger numbers of theatres, others small. You understand in most of these situations these people grew up in the busi-

Leonard H. Goldenson—By Defendant—Cross

ness and Paramount acquired an interest in those theatres from those people who grew up in those areas.

(1233)

Q. In most of the situations your local partner or representative, as you call him, does have a circuit of theatres, isn't that correct? A. In some cases, yes.

Q. It is true in most, isn't it? A. No, not in most. I would say there are a great number where they only operate in a given town.

Q. Well, in those cases where they do have a circuit of theatres, the operations frequently extend over quite a wide area; maybe two or three states, isn't that right? A. In some cases it may be so, yes.

Q. And the people who actually locally manage the theatres, that is, the theatre managers in the towns involved, have nothing whatsoever to do with the buying of the theatre, is that right? A. That is right, sir.

Q. The film buying in each case is handled by this local representative who has his percentage contract with you?

A. That is right. In the case where the man has an interest in the corporation, by the man who has that interest in the corporation.

Q. Yes; and in some cases, such as with Mr. Richards in New Orleans, in making film deals he may include with the theatres in which you are interested a substantial number of others in which he has an interest but Paramount does not, is that right?

Mr. Seymour: I object to that as hypothetical.

(1234)

What he may do seems to me utterly hypothetical. There is no evidence on it.

Judge Hand: I will allow it.

A. I can't answer that, Mr. Wright, because we have a contract with Mr. Richards that came into effect at the time that the Paramount-Richards Theatres were in receivership

Leonard H. Goldenson—By Defendant—Cross

under which there is specifically excluded his interest in these two corporations; so he buys specifically for Paramount-Richards' so far as we are concerned.

Q. And you don't know how many other theatres may be thrown into those deals, is that right? A. Well, certainly as far as Paramount-Richards' contract is concerned, it is only as to Paramount-Richards' theatres. That is all we are interested in and that is all we know. I have never seen anything else.

Q. And the reports you get are confined to the performance of the theatres in which Paramount itself actually has an interest? A. That is right, sir.

Q. Now, these local representatives are loosely referred to in the trade as Paramount partners? A. I think sometimes they are referred to as that.

Q. Although in some cases they may be partners in that they have 50 per cent and in the others you own a hundred per cent of their corporation, but they simply have a sharing (1235)

management agreement, is that right? A. I think in the trade they call them partners, whether they are a hundred per cent or 50 per cent.

Q. And in either event you have regular meetings of all of those people in which they all get together with you, is that right? A. That is right?

Q. And at those meetings you frequently have a representative of your sales department, or usually? A. We have had meetings of the sales department; we have had our production department there; we have had our advertising department; we have had a great number of executives of Paramount. We usually have our legal counsel, who wants to come down, Mr. Keough; we have a number of people.

Q. There is regular contact maintained among all of the partners and all the other departments of Paramount? A. Yes, in this sense, that if a person has a good advertising campaign on a picture and we hear about it, they send it in

Leonard H. Goldenison—By Defendant—Redirect

to us and we send it out to the field so that the others can take advantage of it if they wish. Or if one circuit happens to be making better progress, let us say, in the construction of theatres or maintenance of theatres, or doing things of that nature, and he informs us of it, we send that information out to all the partners, so to speak.

Q. Now, I believe you mentioned that one of the matters (1236)

that comes before the boards of these corporations in which you always have an approval of in New York is this question of capital expenditures? A. That is right.

Q. That is a little bit wider than that, isn't it? How about if they want to acquire a theatre where there may be no capital expenditure involved? A. I stated this morning that we approve all acquisitions of fees for leases or the extensions of leases. I already stated that in my testimony.

Q. I apparently did not understand you. A. Yes.

Q. Well, in any case anywhere where there is a theatre acquisition, that has to be approved by you, is that right?

A. Oh, yes, that is right, sir.

Mr. Wright: That is all.

Redirect Examination by Mr. Seymour:

Q. Now, at those meetings which Mr. Wright asked you about, Mr. Goldenison, is there a discussion as to the negotiations or the terms which the various theatre-operating heads are having or have made with other distributors? A. Never—

Mr. Wright: If the Court please, I submit he is in no position to answer as to what is discussed between 20 or 30 people at those meetings.

Mr. Seymour: Well, now, you developed he is there, and I think he ought to know.

Leonard H. Goldenson—By Defendant—Redirect

(1237)

Judge Hand: Overruled.

A. (Continuing): It never has been discussed.

Mr. Seymour: Now, I neglected, I am sorry to say, when I had him on direct to ask my friend, Mr. Wright, to stipulate, so that I would not have to take the time to put them to him, the same thing that we stipulated on the last witness, that if asked Mr. Goldenson would answer in the negative the questions negating conspiracy which I put to Mr. Zukor, with the same force and effect as if they were asked.

Mr. Wright: It is so stipulated.

Judge Hand: We will take a recess until tomorrow at 10.30.

(Adjourned to October 26, 1945, at 10.30 a. m.)

Austin C. Keough—By Defendant—Direct

(1238)

New York, October 26, 1945,
at 10:30 o'clock a.m.

Trial resumed.

Mr. Wright: If the Court please. I have these two exhibits here that have been marked for identification, Government's Exhibit No. 375, the telegraphic report form referred to in the testimony of Mr. Reagan and Mr. Goldenson; and Government's Exhibit No. 376, the list of franchises which has now been corrected; and I will offer these two in evidence.

(Government's Exhibits 375 and 376 for identification received in evidence.)

Mr. Seymour: I now call Mr. Keough.

AUSTIN C. KEOUGH, called as a witness on behalf of the defendant Paramount, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. What is your position with Paramount, Mr. Keough?

A. I am a member of the board of directors, vice-president, secretary and general counsel of the corporation.

Judge Goddard: A little louder, please.

Q. Will you speak up? A. I am sorry. I am a member of the board of directors and the executive committee, vice-
(1239)
president, secretary, and general counsel of the corporation.

Q. Now, how long have you been with Paramount? A. Since August 1919.

Q. Can you tell us about the various positions that you have held since you have been with the company? A. In

Austin C. Keough—By Defendant—Direct

August 1919, I joined the corporation, which was then known as Famous Players-Lasky Corporation, as a member of the legal department under Elek John Ludvigh, who was general counsel. I continued in that position until about 1925, when I also became an officer and counsel to Publix Theatres Corporation, which was then newly created, a wholly owned subsidiary of Famous Players-Lasky Corporation. I continued to be a member of the legal department of the parent company and counsel for Publix Theatres Corporation until January 1932, at which time I became general counsel of the parent company, a member of the board of directors, and secretary of the company.

I continued as a member of the board of directors until sometime in 1935, when I ceased to be a director until about 1937, and I was reelected. I continued to hold the office of secretary and general counsel from 1932 to the present time.

Q. Speaking generally; what has been the nature of your duties? A. Principally, that of legal counsel; largely how- (1240)

ever, that of executive of the parent company and of its wholly owned and partly owned subsidiaries.

Q. Now, prior to coming with Paramount or Famous Players-Lasky—and I shall use the word Paramount for convenience—had you had experience in the motion picture industry? A. I had.

Q. And when did you first become connected with the industry? A. In 1916 I was in the office of the law firm of Konta & Kirchwey. That law firm was counsel to Lewis J. Selznick and Selznick enterprises, and his various moving picture companies; and a little later counsel to Select Pictures Corporation, which Mr. Selznick's companies or Mr. Selznick owned half in stock, and Famous Players-Lasky Corporation owned the other half. During the period from about the fall of 1916 until May of 1918, I spent about half of my time attending to the affairs of the Selznick group of moving picture companies—

Austin C. Keough--By Defendant--Direct

Q. As counsel? A. As counsel.
(1241)

Q. Did there come a time in the history of Paramount when there was a change in the method of operation of the theatres in which Paramount had an interest? A. There did.

Q. And when was that, approximately? A. There were two periods of change. Originally, Paramount acquired interest in theatres 100 per cent and also acquired interest in theatres or corporations that held and operated theatres 50 per cent or other percentages.

Q. That is in some it had acquired 100 per cent and in some 50 per cent? A. Yes. The management of the 50 per cent companies was in the hands of the local individuals who owned the stock.

Then, between 1925 and 1929 or 1930, the company began to acquire those interests, those outstanding interests, for itself, so in many cases it became the entire owner of these corporations.

Then there was a change back in about 1930, 1931, going through 1932, 1933 and 1934.

Q. Prior to 1931, as Paramount increased its interest in the companies in which it had 50 per cent interest in, was the operation of the theatres in those companies largely supervised from New York? A. It was.

Q. Then did there come a change in that regard about 1931 and following that? A. Yes, principally in 1932.

Q. What was the nature of that change? What were the
(1242)

reasons for it? A. The nature of the change was a sending of the management—both authority and responsibility for the theatres—to the field, whether the manager was a 100 per cent employee of a 100 per cent company, or whether he was a part owner in the corporation, and more and more during that period, and the following year, 1933, Paramount brought into co-ownership of corporations theatre men, many of whom had formerly created the theatres themselves, some

Austin C. Keough—By Defendant—Direct

of whom had been out of the business for years, and some of whom had stayed in the business. So, there was a sharp change in 1933 in what we generally called decentralization of management and operation.

Q. From that time on have the local managers, both in connection with the 50 per cent-owned companies and the 100 per cent-owned companies, been determining the operating policies of those companies? A. They have, I think, with no exception.

Q. Can you tell us why that change was made in 1931, 1932 and 1933? A. The change was made as a result of a business decision reached that that was much the more efficient way of managing these many theatres which had local problems which ought to be solved promptly and by people that knew the local situation and not wait until facts had come to New York and gone through—among a board of people, some of whom had never seen the theatres. That was (12) the reason why we started sending back, or decentralization of management.

There was an additional reason for that that had to do with the financial condition, the bankruptcy and receivership.

Q. We will come to that. Since that time those companies have been operated locally? A. They have.

Q. Are they operated separately by their local managers without relation to each other? A. They are operated separately unless a given company is a subsidiary of another company.

Q. Yes, of course. A. And then they are operated as a unit.

Q. What I mean is, there is no relationship between the operation of the Interstate Circuit or the Interstate Theatres in Texas and the operation of the United Detroit Theatres in Detroit? A. None whatsoever.

Austin C. Keough—By Defendant—Direct

Q. Or between any of the other companies except as they have a subsidiary relationship? A. That is right.

Q. As they do in some particular areas? A. For example, in Texas, Interstate Circuit, which is the name of a corporation in which Paramount has a 50 per cent interest, is managed by its local officers. Also in the State of Texas there is another company in which Paramount has a 50 per cent interest in which the Interstate stockholders have no (1244) interest. That company is managed by its local officers and they have no connection with each other whatsoever—they almost don't talk to each other.

Judge Hand: What is that Interstate that was in the litigation in 306 U.S.?

The Witness: That is the corporation that I have just referred to, the Interstate Circuit, Inc., which is a Delaware corporation, operating in Texas and operates in the principal towns of Texas—has theatres in the principal Texas towns. That is the company that Paramount has a 50 per cent stock interest in.

Q. That is managed locally? A. Yes, sir.

Judge Bright: What is the other corporation that you mentioned in which Paramount has a 50 per cent interest?

The Witness: The Jefferson Amusement Company.

Judge Bright: That is also in Texas?

The Witness: That is also in Texas. That is in East Texas.

Q. After the decentralization of the operation of these theatres, were management contracts made with the local managers of the hundred per cent companies under which they shared in the profits of the enterprise, of the company?

Austin C. Keough—By Defendant—Direct.

A. In a great many instances they were. Perhaps not in all. (1245)

Q. But the general policy was to assign duties to the local manager and give him a share in the profits of the enterprise?

A. Yes.

Q. As compensation? A. Yes.

Q. And of course, in the 50— A. Shares in the profits of the particular enterprise that he was responsible for.

Q. Yes, the particular company. And, of course, in the other companies where Paramount had a 50 per cent interest, the other interest shared by reason of their stock ownership? A. Well, they sometimes shared by reason of management contracts because they devoted their time and energies and they were rewarded for that as anyone else acting as an employee would be rewarded in addition to their stock interest.

Q. And those contracts were made between the particular theatre-operating company and the local operator? A. They were.

Q. In the course of your duties did you participate actively and intimately in the receivership and bankruptcy proceedings of Paramount? A. I did.

Q. In those proceedings was the relationship of Paramount to theatres in which it had an interest changed in many respects? A. It was.

Q. I wish you would tell us, if you will, about the financial difficulties, the receivership proceedings and the bankruptcy proceedings, and how they affected Paramount's interests in theatres. (1246)

Mr. Wright: If the Court please, I do not understand the relevancy of this. I do not understand the purpose of this testimony. I do not see what the receivership difficulties have to do with any of the issues that we are trying here.

Austin C. Keough—By Defendant—Direct

Mr. Seymour: It will be developed, if your Honors please, that many of the present relationships to theatres resulted from those proceedings; that Paramount in those proceedings lost many theatres in which it had an interest; that there were local proceedings over the United States which affected theatre interests; and at the same time, one of its competitors, at least, and perhaps more, were operating profitably, going ahead, while Paramount and some of these other companies were in great distress, a very strange form of combination in conspiracy, and I think we are entitled to develop that.

Judge Hand: Go ahead, and see what it is.

A. In January 1932 the parent company, then known as Paramount-Publix Corporation, went into equity receivership in the United States District Court for the Southern District of New York. It stayed in equity receivership until some time in March of 1933, I should have said was the (1247),

date. In March 1933, when it went into voluntary bankruptcy, three trustees were elected. It stayed there in voluntary bankruptcy until June 1934 when, upon the passage of 77B of the bankruptcy law, it was one of the first companies to petition for reorganization.

At the beginning of Paramount's receivership, Paramount had a number of wholly-owned subsidiaries engaged in producing pictures and distributing pictures. They also had a large number of wholly and partly owned subsidiaries that owned, leased and operated theatres in various parts of the country. Some of those theatres were, financially, in good shape; most of them, due to the depression, were in bad shape.

One of the largest of the subsidiaries, Southern Enterprises, went into bankruptcy on its own voluntary petition

Austin C. Keough—By Defendant—Direct

on the very day that Paramount-Publix went into equity receivership. That company had either directly or through subsidiaries the holdings not only in the eleven or so southern states but in other states, middlewest and elsewhere.

Publix Theatres Corporation had, for several years, been a managing organization that united the operations of these wholly-owned companies, kept books for them, negotiated film contracts and whatnot. That company, while it never
(1248)

went into bankruptcy or receivership, was hopelessly insolvent.

Upon the going in of Paramount into receivership, the receivers found that, owing to ancillary receiverships throughout the country, they were threatened with loss of control of their film exchanges; they found that their studio, many of whose contracts were held directly by artists, writers and whatnot directly with Paramount, those contracts were being jeopardized, they were losing them—the artists were going to our competitors. Our competitors were encouraging, if not spreading, the rumor that Paramount was all through and not a good company to work for and “you had better come and work for another company,” meaning themselves.

Our theatres were the subject of a series of individual bankruptcies or receiverships.
(1249)

That very chaotic condition first led to the voluntary bankruptcy to bring the management of Paramount all over the United States into the hands of this court and the three trustees; and during the period of the bankruptcy and the reorganization, which ended in 1935, the trustees in bankruptcy, their counsel, I and others of the executives who were directors and officers, counsel, of the wholly owned and even partly owned subsidiaries, tried to save for Paramount the various assets that the Paramount organization as a whole had, whether they owned them direct or whether they owned them

Austin C. Keough—By Defendant—Direct

through their subsidiaries, against the bankruptcy and receivership proceedings and attack and disintegrating influences.

In the course of that we lost theatres; we lost theatres to non-affiliated companies—I don't recall whether we lost any to so-called affiliated companies; I think we did, a few—we had to reorganize the various theatres by bringing into co-ownership individuals, because the bondholders, preferred stockholders and others of those separate corporations insisted upon it.

We had a thoroughly decentralized management. And we had a sharp business difference in the point of view between the advisers of the trustees and the management, as to whether or not the Paramount organization should get rid (1250)

of theatres, because these theatres were expensive; they were geared high in overhead charges; and at that time the studio seemed to be making a little money on the product it was turning out, which we of the management felt was rather inferior product at the moment under bankruptcy conditions. I for one held the view, and expressed it, that if the theatres were not preserved to Paramount during the period when we were trying to recover and reorganize, that when we got all through there would not be very much to reorganize; other people would have the theatres and we would not have the theatres, and we would start from a very disadvantageous position in the manufacture of pictures, principally in getting talent. As a result—

Q. Will you explain why that would be so? A. Excuse me, I didn't hear that.

Q. Will you explain why that would be so? Why would you have difficulty in getting talent? A. If our competitors were not in financial difficulties, or, at least, those who were not in the courts—and most of them were not, regardless of whether they had financial difficulties or not—most of them

Austin C. Keough—By Defendant—Direct

were not in the courts. RKO was in the courts at that time, but Warner Bros. was not; Metro certainly was not, they were very, very prosperous. Columbia was not; Universal was not; United Artists was not; Twentieth Century-Fox was not. It might well have been but it was not. It had (1251)

an interest with the Chase National Bank which made it unnecessary for it to go into bankruptcy. We were sitting there in bankruptcy, and agents and others were pointing out to our artists: "this is a bankrupt concern; you have got no future; go with a solvent one."

Now we had to stem that tide of competition for our people. We had to stem the tide also of competition for the screen time that our distributing agencies were seeking in competition with the others; and the same story, certainly in the early days of Paramount's bankruptcy and receivership, was bruited about among the exchanges.

I speak of firsthand knowledge because I came right upon it in connection with these ancillary receiverships. And the fact that we were losing the theatres that we had was also an argument made.

Now if we lost the theatres, the next step was—well, that was the best proof that their argument was right; we were just on our way out.

So the whole thing in the opinion of the management, which I shared, and in which I was one of the spokesmen, was that the interest of Paramount, the reorganization, was best served and vitally served by reorganizing or having the trustees, who had no money, to allow the distributing com- (1252)

panies that had funds, to use those funds to finance the preservation and the retention of theatres.

We did that, and we finally in a couple of years came out and reorganized in very good shape.

Q. Where did the distributing company get the money?

A. Through the distribution of pictures, what we call film

Austin C. Keough—By Defendant—Direct

entals, which came in. We were making a profit. What was left over after we sent the weekly pay check to Hollywood we were able to use for the purpose of making sure that we had a home.

Kansas City was one of the cases, I remember, in which there was severe competition to try to get our Kansas City theatres away from us; and our landlord wanted a hundred cents on the dollar, and he got it.

Q. Now as a result of all those proceedings, Paramount lost some theatres and also changed its relationship to its interests in some of the theatre operating companies, is that correct? A. It did, yes.

Q. In some where it had acquired a hundred per cent, a portion of its interest went back to the original management to others; and Paramount thereafter was only a 50 per cent stockholder, is that right? A. That is right.

Q. And that happened, for example, in connection with the Comerford Circuit that was mentioned here yesterday, is it not? A. It did.

253)

Judge Bright: What circuit?

Mr. Seymour: Comerford.

Q. And did it happen in connection with others? A. Yes, happened in connection with the Comerford Circuit, the Interstate Circuit, the Texas Consolidated Theatres, the A. Blank group of theatres known as Tri-State; various ones. The Western Massachusetts theatres, which we owned a hundred per cent, we wound up with a 51 per cent stock interest.

Q. In the course of those proceedings was there contention that the Paramount Theatre in New York should be sold or disposed of? A. Yes, there was.

Q. And was there discussion of that before the Judge in charge of the proceedings? A. Well, there was a hearing

Austin C. Keough—By Defendant—Direct

on the reorganization of the Paramount Building in this District Court, a bankruptcy proceeding or a reorganization proceeding. As a matter of fact I had to be a witness in it.

Q. Was that before Judge Coxe? A. That was before Judge Coxe.

Q. And what were the contentions about that? A. Well, some of the creditors said that the real estate was bad; that we ought to get rid of it, because there was a big mortgage on it held by the public, and that it was a white elephant and we ought to get rid of it and sell our pictures—I don't (1254)

know where we were going to sell them, but, anyway, sell them—well, anyway, get rid of the theatre and move over to Tenth Avenue and get some offices much cheaper.

We presented the evidence and the opinion that that theatre was strategically necessary for Paramount; we were not interested in the Paramount Building; that went up 29 stories; but we were interested in the Paramount Theatre. And with the change and improvement in business from the deep depression onward, why we stopped losing money, and we had better management, and we made some money. Well, the future has borne out our predictions. From that day to this it has been prosperous.

By Judge Hand:

Q. Wasn't there some litigation over that theatre? A. The Paramount Theatre?

Q. Yes, in the District Court. A. No. There was a reorganization proceeding.

Q. Oh, yes. Of course I know about all those. A. But I know of no litigation over the Paramount Theatre.

Q. There was no question of preferential payments or anything like that? A. Not of the Paramount Theatre. The trustees of Paramount-Publix brought a lot of suits into this

Austin C. Keough—By Defendant—Direct

court, under the authority of the court, against the old directors and the banks and so forth. Those were all disposed (1255)

of as part of the reorganization which was approved in this court.

Q. I didn't mean that. I think I am mixing it up with something else, but in one of those cases at that time I remember I was in a position of dissenting in the Circuit Court of Appeals. A. Well, it did not apply to Paramount; I don't remember what it was. I don't remember any dissent in the Court of Appeals in any Paramount proceeding.

By Mr. Seymour:

Q. Now, in the course of those proceedings, were there any developments in connection with Paramount's interest in theatres on the West Coast? A. Yes.

Q. What were they? A. The proceedings primarily had to do with the theatres Paramount owned in San Francisco, which some years before they had leased to Fox West Coast I think it was; and that situation had to be reorganized. Fox West Coast was in bankruptcy, and we had to reorganize mortgages; and in one case one of the local real estate men, a man named Lurie, stepped in; he had a ground lease; and he just grabbed it, and we had to deal with Mr. Lurie thereafter. Those proceedings, those reorganization proceedings went through the courts out there and went through this court in the bankruptcy proceedings.

Q. Were there certain agreements made with Fox West (1256)

Coast which were approved in the course of those reorganization proceedings? A. Yes, there was.

Mr. Wright: If the Court please, is there going to be any contention made here that because an agreement has been approved by a bankruptcy court, that it can't violate the Sherman Act?

Austin C. Keough--By Defendant--Direct

Mr. Seymour: I do not think I would go that far. But I think the fact that the court dealing with the proceedings, and intimately familiar with the problems, permitted a transaction with the Fox West Coast, is some indication that the Government's attack on the transaction is as frivolous as it otherwise appears to be. Is that a fair statement?

Mr. Wright: I take it that Mr. Keough by his testimony is not going to attempt to show that any question as to the effect of those agreements from the standpoint of the antitrust laws, was even brought to the bankruptcy court's attention. Is that right?

Mr. Seymour: Yes, Mr. Wright.

By Mr. Seymour:

Q. Now, were various other agreements with respect to theatres and Paramount's interest in theatres, and so on, passed upon by the court in those proceedings? A. Yes.

Q. And were there arrangements made for local operation of the various theatre companies, and for the disposition (1257)

by Paramount of some of its stock interest in those companies, matters which were disposed of and passed on in the course of those proceedings? A. Yes, in several cases and in the most important of the cases. They had to be. They were assets of the Paramount bankruptcy or reorganization estates, and this New York bankruptcy court had to pass upon them, give their consent to the transaction, whatever it was.

Q. You were one of those who in the course of the proceedings took the position that Paramount should retain an interest in theatres? A. I was.

Q. And you have indicated your basis for that view? A. Yes.

Q. And eventually that view prevailed, did it? A. It did.

Austin C. Keough—By Defendant—Direct

Q. And since that time Paramount has continued to have an interest in theatres? A. Yes.

Q. Have there been some changes since that time? A. Yes.

Q. Is it still your view that Paramount needs an interest in theatres? A. It is.

Q. Will you tell us why? A. There are two reasons why Paramount—and I do not single out Paramount from any other producer or distributor of pictures—needs theatres: one purpose is to do that kind of exploiting of pictures which (1258)

requires the spending of a considerable amount of money in advertising, and a process called exploitation, which goes beyond just putting advertisements in the newspaper, which has to do with running the picture as long as the public will patronize it; going through a process where perhaps the exhibition is on a dollars and cents losing basis for a time, or even throughout the entire run of the picture; a presentation of that picture in its most attractive form to the public, where a private enterpriser or exhibitor just would not want to do it, would not want to take on the risk—let somebody else do it. Now that is one purpose.

Q. Will you explain why that exploitation is important? Is it important beyond the effect in the particular theatres which exploit it? A. Oh, the whole purpose of that kind of exploitation is to make the picture favorably known to the public over the wide area not only served by that theatre, but the inhabitants of which hear about the success of the picture. Furthermore, that kind of success is an inducement to exhibitors to buy and book that picture. And when I say buy, that is a trade term. They buy nothing except a license to acquire that picture and exploit it, and give it better time if it has succeeded. Success breeds success. They want the successful.

Austin C. Keough—By Defendant—Direct

(1259)

Now, there is a bit of a gamble in that, just as there is a gamble in making the picture at all. That is one purpose of a producer or distributor having theatres that he can count upon, know that they are available when he needs them.

The other purpose grows out of the ordinary dealings between exhibitors and distributors, and that is to have the assurance that the product you make—you spend large amounts of money upon them; you risk your judgment, your showmanship judgment, and ideas of what the public will like against dire predictions to the contrary, even in your own studio or your own sales organization, to say nothing of critics and whatnot; and exhibitors, they are always skeptical about things. Now, you make these pictures at a risk. It is not one picture you make. You make a program. You have to make a program to operate a studio. A big studio has to make a considerable number of pictures; a little studio may make a few pictures; but the trade needs a lot of pictures coming regularly, steadily. In order to be sure that you have got a market for those pictures you must be protected against what we have found from experience is the desire of many exhibitors to shut a particular distributor out at a particular period of time, maybe not for just a few pictures but for a (1260)

season's product in order to bid down the terms, whether the terms be flat rentals, whether the terms be percentage, whether the terms be the extent of the playing time, the effort of the distributor being to get as favorable representation as possible, and the effort of the exhibitor to buy as cheap as possible.

Now, in that conflict it has been found from time to time that over considerable areas exhibitors may say, "We don't want the product." They may be quite honest in their point of view; but since there are a considerable number of these groupings, that always have been since I have been in the industry, of exhibitors, if these various exhibitors should feel

Austin C. Keough—By Defendant—Direct

about Paramount pictures, for example, a season of Paramount pictures—if enough of them feel the same way about them, try to get them, we think, too cheaply,—well, the whole enterprise is in peril. Well, that exhibitor is not farsighted. He is not thinking of what is going to happen to Paramount, because in the meantime he has got plenty of other products competing to get that time from Paramount. He has got the product of eight, nine, ten companies, depending upon when it is. I mean, over the period I have been connected with this business, the distributors have grown from small stature, small companies, to large companies; and those that were (1261)

large, like Paramount, the one back in 1918 and 1919, it was the leading company, almost so far out, it almost had no second; it went down; it went into bankruptcy; it struggled back. Today we think it is fair to say we occupy one of the foremost positions. All that has happened.

Now, these various companies, their distributors try to get that precious playing time that we would like away from us; and if an exhibitor does not take our picture, and if enough of them do not take the picture—and a studio can't always be sure that everything it is going to make, or even the majority of things it is going to make, are going to be financially successful. They make terrific efforts to make the best kind of pictures, but they don't always make money.

That is why we believe it is vital for those two purposes for our company particularly to have these theatres.

Now, one other by-product that comes from that is a knowledge of what the public at a theatre thinks about, what their reaction is; how they patronize a theatre; what little things you may do will improve the appeal. That information, if we get it very quick and can pass it on to our distributor company and our studio—and we do it through passing out (1262)

among the audiences cards and ask them what they think about it,—“What is your opinion about these pictures?”—that is when they are new—all of those things are advan-

Austin C. Keough—By Defendant—Direct

tageous. But that, as I say, is a by-product. The two fundamental necessities, as I see it—as I see it and my associates—for having theatres are the two I mentioned.

Q. Now, as long as you have theatres and feel that you have to have them, do you also feel that you should attempt to see that they are operated at a profit to Paramount? A. I think that is obvious. We spend a great deal of our stockholder's money and we want to make a return on that money. (1263)

Q. I wish you would tell us—you have said something about it—I wish you would tell us somewhat more about the relative relationship in size, success, failure and difficulties of the various distributors through the 20s and 30s, if you can. You have told us how Paramount went into bankruptcy. A. Starting in about the year 1913,* Paramount, by concession of the trade, was preeminently first in pictures that it made and in stars that it had. There were other companies actively competing with it, the so-called Big Four, Vitagraph and Selig and a couple of other names there.

Mr. Proskauer: Will you keep your voice up? I heard the word "Vitagraph", and I want to hear it all.

A. (Continuing) There was a Big Four, which then consisted of a company called Vitagraph, and Selig, and Spoor* and Essanay. They were independent studios that marketed their products through one distributor of their own. And there was the Universal Pictures Company. There was the Fox Film Company and, of course, there were a great many state-right companies, Mutual Film Exchange, and along about that time First National was formed. I think there has been some testimony here about it and I won't go into detail. It was formed, it acquired stars of Paramount and stars of others; it took Charlie Chaplin, for example, away from Mutual.

*See correction made by witness at printed record page 2486, *infra*.

Austin C. Keough—By Defendant—Direct

(1264)

Q. That was formed by exhibitors? A. Yes, it was formed by exhibitors, the principal exhibitors in the United States, ones with the finest theatres, most desirable customers of everyone, particularly of Paramount.

Fox Film Corporation continued to be in existence and Universal continued to be in existence, and there was a company called Metro Pictures Corporation. There was a company called Goldwyn. Samuel Goldwyn, who originally was connected with Famous Players-Lasky Corporation, formed his own company, produced pictures, quite early in the game; 1919, I think, and at all times he made fine, important pictures. He had some arguments with his associates and he got out of that company and that company then, well, along about 1922 or so, went in with the Metro Pictures Corporation, became Metro-Goldwyn, and a man named Louis Mayer, who was a producer, joined this group, and that company became—was acquired by Loew's, Inc.—they were theatre people.

Q. Do you remember about when that was? A. Somewhere in 1922 or '23, somewhere along there.

Q. Do you know whether Paramount had been licensing pictures to the Loew Theatres before that happened? A. Yes, sir, they had.

Q. Go ahead. A. Then along about 1923 there came—oh, there was a company called Warner Bros., Warners, which was quite a small company. It did state-right business.

(1265)

Then there was a company that was formed along about 1923 called Columbia Pictures Corporation. I forget the name of its predecessor company, but it was a small company.

Along about 1920 or '21 one of the impressive companies was formed, United Artists Corporation, which was formed

Austin C. Keough—By Defendant—Direct

by the then four greatest stars in the business, Mary Pickford, Charlie Chaplin, Douglas Fairbanks and the great director, David Wark Griffiths. They went together to make their own pictures, produce their own pictures, and they produced them separately but they marketed them or distributed them through this corporation, United Artists Corporation. They got other stars to join the United Artists Corporation. In starting, they figured their pictures were so great, so fine, their personalities were so compelling that all they needed was the product of these four supreme artists to fill any theatre for a year. Perhaps they would have if they had continued to make pictures, but Mr. Chaplin made one picture one year and he didn't make another for two or three years—whenever he felt like it—and Mary Pickford made a few pictures, and Fairbanks hopped from one great production to another. They took a long time to make pictures. And the result was that that organization found that they needed more pictures to supply the time of their customer (1266)

theatres, so they went out and got other stars. Some of them they took from Paramount. For example, they took Gloria Swanson right away from Paramount at a fantastic salary bid.

That went on during this whole period of time, and Universal, which was one of the—originally one of the great, great large companies, became less; United Artists came up; Paramount began to go down a bit and then up a bit; Metro started to climb and has been climbing ever since. And that was about the number of large companies which shifted their position during the 20s, all more or less affected by the terrible depression of the early—1932, 1933. The depression was not effective upon the moving picture industry until 1931. 1930 was the banner year of the picture business for everybody.

Those Warner brothers I mentioned, the Warner brothers in 1927 took sound. Sound had been offered by its dis-

Austin C. Keough—By Defendant—Direct

coverers and perfecters to Paramount and offered to Metro and offered to the other companies and they didn't see it; it was just a gadget and they weren't interested in it. Warner Bros. took it and Warner Bros. made a terrific success of it, and then everybody wanted it and Warner Bros. was a year ahead of everybody else. Warner Bros. had both sound pictures and silent pictures, so they went out and they (1267)

bought First National and they bought theatres and what-not.

Q. Will you bring it down to about the time of Paramount's greatest difficulty? Were any of the other companies in difficulties and were some of the other companies prospering? A. Well, Metro definitely was prospering, Fox Film Corporation was in difficulties—its size, its theatres; Warner Brothers were in difficulties—those difficulties did not lead to the door of the bankruptcy court in either case; Universal had difficulties and the trade papers predicted bankruptcy and going out of business, and then there was a change in management. Mr. Laemmle sold out, Mr. Bob Cochrane got out, and there was new management, a new surge of blood, and now, today, Universal is one of the foremost companies in the business.

Judge Hand: I think this enormous amount of relation of the existence of these people between wind and water is not very illuminating to me. There is no doubt there was a great deal of competition and a great deal of struggle. There isn't the slightest doubt about it. The question is whether there was, in this field, a ganging up against independents. No doubt that they were competing all the time.

Mr. Seymour: And they are still competing.

Judge Hand: And that they would take anything

(1268)

away from each other that they could.

Austin C. Keough—By Defendant—Direct

Mr. Seymour: That is right.

Judge Hand: It doesn't prove your case or prove theirs.

Mr. Seymour: It is rather odd, of course, there is no indication in the Government's case as to when they claim this combination and conspiracy arose, but it would seem that it must have some relationship to the time that these companies got interests in theatres, because it is monopoly of theatres that they charge, a conspiracy to monopolize theatres.

Judge Hand: These gentlemen are so accurate that they may have attempted to appeal to a diversified mentality.

Mr. Proskauer: I might suggest I do not know what independents we are charged with ganging up on. Are we charged with ganging up on independents—

Judge Hand: I did not say you were ganging up on anybody, but that is the problem.

Mr. Proskauer: I could meet the problem better if somebody would state it to me. Whom am I charged with ganging up on, independent theatre owners or independent producers or what? I do not know at this minute, after hearing the Government's case.

(1269)

Mr. Seymour: I won't try your patience beyond a couple more questions, then I am going to turn to another topic.

Q. Can you tell us something about the growth of independent producers since the period that you have been talking about? We have had some testimony about it and I wonder if you can add anything to it? A. Over the entire period of 1919 or, rather, from 1917, when I first became acquainted with the situation down to the present time, there

Austin C. Keough—By Defendant—Direct

have been independent producers in the business, many of them active and prosperous. The independent producer usually is the best and most talented man, whether he be a producer or a director or sometimes a writer, or sometimes a star, man or woman, and for one reason or another, good to themselves, they go into independent production and nobody has any interest in their venture except as they perhaps provide financing for them.

Those people seek outlets, somebody to distribute the picture. There are eleven different national distributors today and some state rights—state righters—and the people of the kind I am speaking about, the best, look for the best facilities, the best distributing organizations. There is competition for their services, to distribute their pictures.

(1270)

Some companies have a policy that they would rather handle their own. Paramount at various times has handled a great many independent productions. It varies from time to time. Now at the present time there are as many, if not more, independent producers actually producing pictures as there have been at any time within my memory.

Q. Mr. Freeman said there were about twice as many today as there were ten years ago. Have you any impression about that? A. I don't know whether it is twice as many. Certainly a large number. Today you have prosperity. There are more people making pictures. You also have tax questions, which is an explanation why there are independent producers in greater numbers today than formerly.

Q. Can you tell us anything about the development of Republic, Monogram and P. R. C.? A. Only that over the last several years, from being originally a state-right group of organizations, they became national organizations and they have been spending more money. They used to make cheap pictures, Western pictures, little pictures, and now they are making Westerns and cheap pictures and good

Austin C. Keough—By Defendant—Direct

pictures. Republic is spending considerable sums of money in the pictures they make and in the advertising they give to them and because the pictures are better, have more substance, more appeal to them, why, they get played in theatres (1271)

where they did not get them played before. That has grown in the last several years.

Mr. Seymour: I am going to turn to the subject of film license contracts.

Q. Mr. Keough, before you came to Paramount, were you familiar, as a result of your professional work, with the general nature of film license contracts in the industry?

A. I was.

Q. Have you caused a search to be made among the old contracts in the Paramount to ascertain whether certain provisions which are now included in Paramount contracts were used in film license contracts prior to 1919? A. I have.

Mr. Wright: If the Court please, I submit we ought to have those contracts. If this is going to be testimony based on what he discovered, we ought to have those contracts.

Mr. Seymour: I am asking generally, and I will give you the contracts, if you want to examine them.

Mr. Wright: I should think the best evidence would be the contracts themselves. If you have any old contracts, let us have them marked and offered. I have no objection to their going in but I do object to Mr. Keough's just characterizing them without the contract itself being before the Court.

(1272)

Judge Bright: The question now is, has he made a search.

Judge Hand: Overruled.

Austin C. Keough—By Defendant—Direct

Q. Do you want the question, Mr. Keough?

Judge Bright: He said he has.

A. I said I had made a search or caused one to be made.

Q. As a result of your experience and as a result of the search which you have made, can you tell us whether prior to 1919 films were licensed by Paramount on runs? A. They were.

Q. Was there in the industry and in the Paramount contracts referred to what is now known as clearance? A. Yes, under the term "protection."

Mr. Wright: If the Court please, I submit we ought to have, if he has them, if he was able to find any, copies of the contracts he is talking about.

Mr. Seymour: If your Honor please—

Mr. Raftery: Your Honor, the miners over here want to object to any interrogation until Mr. Wright points out to this Court what the provisions of these contracts are that he claims are violative of the Sherman Act. If Mr. Wright will point those out, we don't care how much more there is.

Judge Hand: Overruled. He is objecting to the (1273)

fact that he is not confronted with the contract that they are talking about.

Mr. Seymour: If your Honors please, I am only going to develop now the fact that historically the various provisions that we have discussed were used, and I will make available to Mr. Wright, for purposes of cross-examination, the examples that they use, but I don't want to put them in the record because I think the record is quite sufficiently burdened and I don't think there is any objection to a general question about the use of terms.

Colloquy

Mr. Wright: I don't desire to cross-examine on the subject, if we can simply have the best evidence of the history that he is trying to offer, which I suppose is the contracts themselves.

Mr. Seymour: I am merely now showing the use of these provisions in the industry prior to 1919.

Judge Hand: Haven't you such a contract here?

Mr. Seymour: Yes, I have.

Judge Hand: There is no reason why you shouldn't show it to him, and you do not have to produce them indefinitely, and Mr. Wright won't want you to.

Mr. Seymour: I am trying to develop two things, first, the general use of these terms in the industry and, secondly, that they were used in Paramount contracts. The general use I cannot give him anything

(1274)

on. That is Mr. Keough's experience.

Judge Hand: You may show him your contract.

Mr. Seymour: What is the question, Mr. Reporter?

(Question and answer read.)

Judge Hand: Do you have it there?

Mr. Seymour: I have it.

Judge Hand: You may show it to him.

Mr. Wright: Have it marked.

Judge Bright: Your first inquiry was with reference to runs?

Mr. Seymour: That is right, and he answered that question. Now I am asking him about what is now known as clearance. And does your Honor insist that we must offer the contract in order to get that question answered? I don't mind doing it, but I hate to encumber the record.

Austin C. Keough—By Defendant—Direct

Judge Hand: If the other side wants you to do it, I think you should. I think he is making a fair preliminary objection.

Mr. Seymour: Let me just get the witness to identify it.

Judge Hand: I don't think it is very important, provided he sees it.

Mr. Wright: I agree with your Honor, but I haven't seen any yet.

Judge Hand: Haven't seen any?

(1275)

Mr. Wright: No, none of these have been offered to me for my inspection.

Q. Will you pick out any contract which contains reference to the requirements for protection which is dated prior to 1919? A. There is a contract of August 1, 1917, between a Boston exhibitor and Paramount Pictures Corporation for the run of a picture at the Exeter Street Theatre in Boston, which contains a protection clause in so many words.

Mr. Seymour: I offer it in evidence.

Mr. Wright: I think some time may be saved if you will go on to something else and give us these during the recess and give us a chance to examine them.

Mr. Seymour: I think, I must say that I think my general questions might have been answered. I offered you an opportunity to examine the contract and you refused it and press your objection.

Mr. Wright: You mean you offered it just now?

Mr. Seymour: Yes, of course.

Mr. Wright: I say, if I am going to have to examine each contract here as they are offered, it will take time. I am suggesting that if you want to save time, you have them identified and go on to something

Austin C. Keough—By Defendant—Direct

else, and we will give you the answer to the question as to whether there is any objection after we have read them.

(1276)

Mr. Seymour: I don't mind at all, if your Honors should not mark them at this time. We will have it marked for identification under an offer in evidence. Mr. Wright has forced this procedure and now apparently he wants to be prepared to play it both ways.

Mr. Wright: If the Court wishes to sit here while I examine the contracts, I suppose there is nothing else to do. I was simply suggesting a means of saving time.

Mr. Seymour: I think the way to save time is not to make the objection. Then that contract is marked for identification but is offered in evidence and if you have an objection to make, I suppose in due course you will make it?

Mr. Wright: Yes.

(Marked Defendant Paramount's Exhibit P-5 for identification.)

Q. Was protection the name then used in the business to describe what is now clearance? A. It was.

Q. Do you know what protection meant at that time? A. Protection meant what clearance means today. Identical concept. It was called protection until about 1935, then it was called clearance.

Judge Hand: What is all this to show anyway, to show an ancient custom of the ville?

Mr. Seymour: Yes.

(1277)

Judge Hand: I think there is much too much fuss made about it all around. If this thing is in the agree-

Austin C. Keough—By Defendant—Direct

ment, why do you fuss about it, Mr. Wright? I do not see that it prejudices your case.

Mr. Wright: I don't think it does either.

Judge Hand: All right.

Mr. Wright: Having read it, I have no objection to it going in, but I do like to have the opportunity to see what goes in before it goes in just as a matter of course.

Judge Hand: All right, it is received.

(Defendants Paramount's Exhibit P-5 for identification received in evidence.)

Q. Prior to 1919, did Paramount use a form of application for license? A. It did.

Q. And in some, at least, of those applications was there a reference to a minimum admission price by the theatre? A. There was a form provided for the insertion of that—of those terms in the printed form.

Mr. Wright: Excuse me. What period is being covered here?

Mr. Seymour: Prior to 1919.

Judge Bright: Prior to 1919.

Q. I show you this agreement dated June 24, 1918, and (1278)

ask you if that contains a reference to minimum admission prices?

Mr. Wright: Again, I think the form should be identified and offered in evidence, if you want to establish what is in it.

Mr. Seymour: I am going to offer it. I first have to have it identified. I am trying to please you in every way I know how.

A. This form contains a space to be filled in with reference to minimum and maximum admission prices.

Austin C. Keough—By Defendant—Direct

Q. That particular copy of form does not have the actual figure in it? A. It does not.

Mr. Seymour: I offer that in evidence.

Mr. Wright: No objection.

(Marked Defendant Paramount's Exhibit P-6, in evidence.)

Q. Were motion pictures licensed prior to 1919 on a percentage basis? A. They were.

Q. And since 1919, down to date, has Paramount licensed motion pictures on the basis of runs? A. It has.

Q. Has Paramount provided for clearance in license contracts? A. It has.

Q. Has Paramount had provisions in its license agreements with respect to minimum admission prices during all or most of that period?

Mr. Wright: What period is this?

(1279)

Mr. Seymour: Since 1919.

Mr. Wright: I submit, if the Court please, that is entirely too broad. He is asking for what has happened over a period of 26 years here, with respect to admission prices.

Judge Hand: Read the question.

(Record read.)

Judge Hand: I will allow the question.

A. It has.

Judge Hand: You can direct his attention to particular things on cross-examination or suggest some definite limitation in his examination, but there is no use in interrupting over these things. We are not a jury here and are not affected by unverified or unverifiable general statements.

Austin C. Keough—By Defendant—Direct

Mr. Seymour: If your Honor please, this gentleman has been counsel for the company since 1919.

Judge Hand: That I know. I think it is perfectly good prima facie evidence.

Q. Has Paramount since 1919 and does it today license many of its pictures on a percentage basis? A. It has and it does.

Q. And are there various varieties of percentage terms which are used? A. There are.

Q. Is one of the terms which is used a so-called percentage to a split? A. It is.

Q. So far as you know, do all distributors in the business, and have they since the early days that you spoke of, without regard to the individual variations between the form of licenses, licensed pictures on runs with clearance, with reference to minimum admission prices and on percentage bases? A. Confining my answer to the companies which are the defendants in this case, I would say the answer is Yes to each of the questions you put. I don't remember whether I ever knew anything about every other distributor in this business, state-righters—I have seen some of them—I don't know everything about the other three, but I know something about them, I have seen some of their contracts.

Q. Do you know whether today the other distributors who are not defendants in this suit distribute their pictures and license them on the basis of run, clearance, minimum prices, sometimes on percentage contracts, sometimes on flat rental? A. They do, at least as to some of their products.

Q. I show you copy of Exhibit P.1—the actual original is out at the photostaters, and ask you, is that the license agreement which is now in use by the Paramount in licens-

Austin C. Keough—By Defendant—Direct

ing its pictures? A. It is, in so far as its feature motion pictures are concerned.

(1281)

Q. Of course, there are terms and sometimes riders and so on attached to particular licenses; but that is the general form used for licensing feature pictures? A. It is.

Q. Who drew it? A. I did.

Q. Does that represent any change over the form that was in use prior to the adoption of that form? A. It does.

Q. Did any other distributor have anything to do with the form of the present contract, P-1? A. No, sir.

Q. Was that drawn entirely in the Paramount legal department by you and with the aid of associates? A. No, it was not. It was drawn by me solely.

Q. I show you this document, which has in the lower left-hand corner, "Form 4440-A-1," I think, and ask you if that was the license contract which was in use just before the present contract? A. It was.

Q. Do you know for how long a period that form was used? A. About 1937 or '38, this form.

Mr. Seymour: I offer that. I will get you other copies, but I am afraid you will object if I don't—

Judge Bright: Is that form one which is in one of these exhibits for the Government?

Mr. Seymour: Yes.

Mr. Wright: We have no objection.

Mr. Seymour: I do not know that there is any use of duplicating it, as a matter of fact. Let me see if

(1282)

I can identify it.

Judge Bright: Has it been introduced in evidence by the Government?

Mr. Seymour: I guess it has. Will you bear with me just a moment?

Austin C. Keough—By Defendant—Direct

Mr. Wright: That is 280.

Mr. Seymour: That is a different form.

Mr. Wright: He testified there had not been any changes since 1938. I assume this is the same as that.

Mr. Seymour: I am sure it is as to body, but the top was different.

Judge Bright: What was that number?

Mr. Seymour: The exhibit in evidence is No. 280.

Judge Bright: 280, that is in this book?

Mr. Seymour: Yes. It states at the top, printed, "Seasons, 1943-44." The one I am now offering is Season 1944-45, but I think that is the only change, and I will ask that from the witness.

Judge Bright: I understood him to say that that was the form which was in use from about 1938 until the last exhibit, P-1.

Mr. Seymour: Yes.

Q. Can you tell us whether the designation of the season is the only change that was made after 1943 in that form, so far as you know? A. Without examining every form that (1283)

we had for feature pictures, I can't tell whether the schedule set up and the description of the season did not vary, perhaps it did. Also, it may be that here and there, purely for styling, and not change of substance, there may have been a slight change, but the bulk of the contract, what is printed on the reverse side, has been the same in text and substance from 1937 or 1938 down to 1945.

Q. Subject to correction, based upon possible minor differences in forms, Government's Exhibit 280, which is for the season 1943-44, is the same as the one for the 1944-45 season and for seasons prior to 1943 back to about 1937, is that right? A. Yes.

Austin C. Keough—By Defendant—Direct

Q. Can you tell us who prepared the form, this Exhibit 280? A. Louis Phillips and some associates under my general jurisdiction and approval.

Q. Who is Mr. Louis Phillips? A. A lawyer of this bar, a member of the legal department of Paramount Pictures, assistant general counsel of the company.

Q. That form was then prepared wholly in the Paramount legal department? A. It was.

Q. Did any other distributor have anything to do with the preparation of that form? A. I never heard of it, and I am perfectly satisfied that nobody did have anything to do with it except Mr. Phillips, his immediate associates in (1284)

the department and myself.

Q. Is that form the result of any agreement or understanding between the distributors? A. Not at all.

Q. Is your present form, P-1, the result of any agreement or understanding among the distributors? A. Not at all.

Q. Can you tell us in general what the nature of the changes was between P-1 and Government's Exhibit 280, without going into details? A. In general, my effort was to throw out every word that I could possibly throw out and get it on a short piece of paper, with most of it on one side of the paper, and make it as large and readable type as I could find. I even picked out a very clear type instead of a rather blurred type formerly used, leaving in only those things which appeared to me to be standardized with us, about which some argument would be raised if they were left out, leaving out nothing that was a clause that favored or was a protection to the distributor—to the exhibitor and throwing out several things that I thought were just law and we did not need. My whole effort was not to change the contract but to simplify it and get it down to a place where both the salesmen and the exhibitors would like it and we could do business.

Austin C. Keough—By Defendant—Direct

Q. In preparing that simplified form, which is P-1, did you have any other form which you yourself had prepared, which you used as a model? A. No, I did not. I had a form (1285)

which Mr. Phillips and some of his associates had prepared as their idea of the simplification. It was not radical enough for me, so I started from scratch.

Q. Had you yourself in your early days with Paramount prepared a relatively simple license form? A. Yes, I had, back in 1922, before the first so-called uniform contract, gone through the same operation.

Q. Was this simplification that was made in the current form a simplification in the direction that your original simplification had gone? A. Yes, but it was not quite as good. My original one was much simpler. (1286)

Q. In the late '20s or the mid-'20s, were there discussions which resulted in the adoption of a uniform contract among distributors? A. There were.

Q. Will you tell us how those discussions arose and who participated, and what the upshot was? A. Prior to 1923 or 1922, while there was general similarity among the contracts used by the various distributors, each company and its lawyer used different language and they put a lot of stuff in there; whenever a new problem arose there would be a new clause written; and they got very complex; and while the subject matter of the trade was about the same, no one would know whether they were having the same yardstick for conduct, which the exhibitor wanted, without studying it very carefully and having a lawyer read it. And there were complaints from the exhibitors about that.

There was a further complaint from the exhibitors. The practice had grown up in the industry for a number of years of requiring the exhibitor to make a cash deposit upon the execution of a contract. Originally that cash deposit was

Austin C. Keough—By Defendant—Direct

to make sure that he paid for a particular picture, a particular contract; and later on it went for more contracts, and again those terms, those deposit clauses, were of infinite variety. The exhibitors did not want the cash deposits, and they sought to have the States pass laws against them, and they succeeded; and that brought about another change in contracts.

(1287)

There was considerable annoyance on the part of the exhibitors, and then they had one large national exhibitor organization, known as the Motion Picture Theatre Owners of America. When the Motion Picture Producers and Distributors of America was incorporated in 1922, and Mr. Will H. Hays became its president, this exhibitor organization approached him and asked him if he would not bring about—

Mr. Wright: If the Court please, I think we can have what was done here; that would be sufficient, instead of all that conversation.

Judge Hand: Sustained.

Q. Leave out the conversations between the exhibitors' organization and Mr. Hays, and tell us what developed. Following such conversation something happened? A. The exhibitors' organization approached Mr. Hays. Mr. Hays did nothing but bring distributors and exhibitors together. They appointed committees; they labored over what they call a uniform contract, for many months. They produced a very long and complex document. That document eliminated completely a cash deposit clause and substituted for it a machinery for arbitration.

Mr. Wright: Excuse me. Have you got a copy of this thing you are talking about now?

The Witness: I have, or counsel has.

Austin C. Keough—By Defendant—Direct

(1288)

Mr. Wright: Would you have that marked or let me look at that?

Mr. Seymour: I do not mind your looking at it, Mr. Wright, as you have looked at almost everything else I have had.

Mr. Wright: Well, it will make it easier to follow his testimony.

Mr. Seymour: Yes, but I do not want to put in any more of these long contracts with small type if I can help it. If you want to put it in, because your eyesight is better than mine, you can.

Judge Hand: You ought to have a typewritten rider like the insurance policies have, which would contain the main meat in the cocoanut.

Mr. Seymour: Yes. The present contract is really very simple.

Judge Hand: Do you mean it is very simple?

Mr. Seymour: Well, it seems to be.

Judge Hand: Well, may be. All these things get worse and worse and finally they get to be like trust indentures for bond issues. Nobody knows what is in them or understands them.

Mr. Davis: Swager Sherley used to say that the modern trust indenture represented all the crystallized fears of three generations of lawyers.

(1289)

Judge Hand: That is a fine definition. They are crystallized all right.

Mr. Seymour: I have now handed Mr. Wright the contract form which Mr. Keough was discussing.

Q. So will you proceed, Mr. Keough? A. That form having been formulated by committees of exhibitors and their lawyers, the distributors, eight or nine of them, and

Austin C. Keough—By Defendant—Direct

their lawyers, it was put into effect, and it was by agreement among the distributors the only form that was used by the eight principal distributors. That is the form that Judge Thacher and the Supreme Court said was illegal to use by agreement.

Q. That was primarily because of the arbitration provision? A. Primarily because of the arbitration provision and the sanction behind the arbitration—

Mr. Wright: I do not think we need—

Mr. Seymour: Mr. Wright, I am not going to go any further about that.

Mr. Wright: I must object to a testimonial interpretation of the decision.

Judge Bright: I suppose we could read that. That is not in fine print.

Judge Hand: There were two of them, weren't there? 282 U. S. you are talking about?

The Witness: Yes. One had to do with the con-
(1290)

tract and the other had to do with a credit committee, which had nothing to do with the contract.

Q. Now, was there a Federal Trade conference held in the '20s? A. If you will permit me to say that prior to the Federal Trade conference you are talking about, in the year 1926, there was a modification of that particular form that I have testified to of 1923, requested by the exhibitors, the net effect of which was that the form contained a warranty that it had every one of the clauses that were in the uniform contract in it, and that there were pointed out any other clauses, so that the exhibitor might clearly know what his contract was without having to read everything in there.

Q. Now, in addition to the standard or uniform form in 1926, did Paramount also have a form of its own? A. It did.

Mr. Wright: May I see that last?

Austin C. Keough—By Defendant—Direct

Mr. Seymour: I will let you look at both of them, Mr. Wright (handing).

Q. Will you proceed chronologically with the development of that—

Judge Hand: This form you have in evidence?

Mr. Seymour: I have not offered it. I will be glad to. If your Honor would like to have it in I shall be glad to offer it.

(1291)

Judge Goddard: If you are going to discuss it, I think a copy would be helpful.

Judge Hand: This is the particular form, as I understand it, that has been declared illegal. I think we ought to have it before us.

Mr. Seymour: I shall be glad to offer it. I offer a copy of the 1923 form, and hope the Court won't have to look at it.

Mr. Wright: We have no objection.

Mr. Proskauer: May I suggest that when it was observed that the court held that the contract was illegal, the illegality was not in the contract, the court held; it was in the fact that it was a uniform contract arrived at—

Judge Hand: I understand.

Mr. Davis: The vice in that contract was that it provided that if any member failed to submit to arbitration, or perform his arbitral award, then the other contracting party would deny him films. In other words, they virtually boycotted the non-observers. That is what brought it down.

Judge Hand: Yes.

(Marked Defendant Paramount's Exhibit P-7.)

Judge Bright: What is that?

Austin C. Keough—By Defendant—Direct

Mr. Seymour: That is the 1923 agreement. Now I offer a copy of the agreement which has been referred

(1292)

to as having been prepared in 1926, the standard exhibition contract.

(Marked Defendant Paramount's Exhibit P-8.)

Q. Of course, Mr. Keough, these agreements were used by each company individually in dealing with the exhibitors to whom it licensed product, isn't that so?

Mr. Wright: If the Court please, he is not competent to give any testimony of that kind.

Mr. Seymour: Of course he is.

Judge Bright: I did not quite get the testimony as to the 1926 agreement. What was that?

The Witness: The 1926 agreement was a modification of the 1923 agreement asked for by the exhibitors in order to include a warranty by the distributor that the contract contained all of the agreed upon clauses of the 1923 contract, and that if there were any additional clauses, they must be pointed out so that the exhibitor could see what the distributor had put in a contract which he thought was the normal, usual, standard contract.

Q. And they were to be pointed out in a document annexed to the agreement? A. Part of the agreement. It says so right in the form.

Q. In the schedule? A. In the schedule. You have got to put it in the schedule.

(1293) Mr. Seymour: I also offer a copy of the non-stand-

ard form of Paramount license agreement as used in 1926, which the witness referred to.

Austin C. Keough—By Defendant—Direct

(Marked Defendant Paramount's Exhibit P-9.)

Q. Did the Federal Trade Commission have anything to do with the 1926 agreement? A. No.

Mr. Seymour: It has been pointed out to me that there is an unanswered question. May we have the unanswered question read?

Judge Hand: Yes.

(Question referred to read as follows:)

"Q. Of course, Mr. Keough, these agreements were used by each company individually in dealing with the exhibitors to whom it licensed product, isn't that so?"

Mr. Seymour: There cannot be any doubt about that. I should think the lawyer in the official position he was should know about that.

Judge Hand: Very well. Will you answer that?

A. So far as Paramount was concerned, the contract was used by the Paramount salesmen, sales managers and so forth, to write the particular individual deal for Paramount pictures; that they negotiated with their various customers, the exhibitors, and that ended it. There was no connection with what any other company did in using the same general form. It had chiefly to do with mechanics and legal consequences, not dollars and cents terms, or anything else.
(1294)

Q. Now you have covered 1926. Will you bring us up to the next stage? A. Following the decision of the Supreme Court of the United States, the so-called standard contract was discontinued as a standard contract, and all the things it had to do with were out. So until the year 1928—

Austin C. Keough—By Defendant—Direct

Q. Mr. Keough, I think your chronology is a little confusing. You are going back now to 1928. A. I had not been to 1928. I did not think I was.

Q. All right. The Supreme Court decision was after 1928? A. There was a period of time between the banning of the uniform standard contract and the bringing into existence of a form as the result of a Federal Trade Commission conference, and during that interval Paramount—and I presume the other companies—used their own form; and you have that as an exhibit, Paramount's form which was used in the meantime.

In 1928 the Federal Trade Commission assembled a trade conference by its invitation, held here in New York City. Commissioner Abraham F. Meyers presided. Distributors, exhibitors, producers and the members of the public were represented at that meeting.

As a result of the discussions that took place in New York, a committee was appointed which—I think it was in (1295)

the year 1928, following those meetings in New York—repaired to Chicago, a committee of exhibitors and distributors. Originally the exhibitors and distributors would not allow a lawyer in the meeting, as I recall it, but they finally got in, and they produced a contract which is the longest contract known to the picture industry. Not only one page was necessary, they had to have half another page.

*Now that contract, having been worked out by this committee, was recommended for adoption by the distributors in dealing with their exhibitors. It is sometimes referred to in the trade as the 5-5-5 contract. It was, I believe, on its face, an optional contract. That is, they did not have to use it, but it was desired that they did use it. It had also an optional arbitration clause right in the face of the contract, and the arbitration clause is optional with the exhibitor. And of course it was optional with the distributor. If the ex-

*See correction made by witness at printed record page 2487 *infra*.

Austin C. Keough—By Defendant—Direct

hibitor wanted it and the distributor did not want it, why it did not go in. So that contract was put into effect—I am wrong about the length of that; it was the later contract—the 1928 contract was the standard contract resulting from the Federal Trade Commission conference—

Mr. Wright: Can't we have those identified so we know which ones he is talking about? I mean by numbers.

Mr. Seymour: Mr. Wright, I will be right up with you.

(1296)

The Witness: There it is.

Mr. Seymour: I offer it in evidence.

Mr. Wright: I still don't know which ones he was talking about.

Mr. Seymour: This is the 1928 agreement.

The Witness: And on the face of it is described so.

(Marked Defendant Paramount's Exhibit P-10.)

Q. Now, did Paramount use that standard form in licensing its pictures from time to time? A. They used that form sometimes; it used its own form sometimes during the period from 1928 to 1934.

Q. That is, there was a separate Paramount license agreement which was also used from time to time by Paramount during that period? A. That is right.

Q. Different? A. Well, it was different in some respects.

Q. I beg your pardon? A. It was different in some respects from the so-called 5-5-5 contract.

Judge Bright: The 5-5-5 contract is Exhibit P-10?

Mr. Seymour: Yes.*

Mr. Caskey: Mr. Seymour, would you ask him what 5-5-5 means?

*See clarification of Mr. Seymour's answer at printed record page 2487-88 *infra*.

Austin C. Keough—By Defendant—Direct.

Q. Mr. Caskey would like to have you tell him what 5-5-5 means, Mr. Keough? A. It was a shorthand description of the committee that was made up. There were five men representing the exhibitors, who were independent; five who represented affiliated exhibitors; and five represented distributors.

Q. Now was there any development with respect to license contracts under NRA? A. There was.

Q. And what was that? A. Following the establishment of the Code Authority for the motion picture industry under NRA, a committee was appointed under that authority to develop a contract which was to be standard in the licensing of pictures. That contract was the longest of the contracts, and it was used by Paramount, and I think most of the companies, until the NRA was declared unconstitutional.

Q. Did the exhibitors have any part in the negotiations leading up to that form? A. They did.

Q. Was that a result of conferences under the NRA? A. It was.

Q. And was there a committee on which the exhibitors were represented which dealt with the question? A. Yes.

Mr. Seymour: I will offer that in evidence.

Mr. Wright: No objection. I notice this refers to the 1935-1936 season.

(Marked Defendant Paramount's Exhibit P-11.)

Judge Bright: We seem to be getting into the three generations in other theatres.

Mr. Seymour: Yes. Well, we are pretty nearly through with that.

Q. Mr. Wright calls my attention to the fact that this contract refers to the 1935-1936 season. Was it used for a brief

*See clarification in printed record page 2488 *infra*.

Austin C. Keough—By Defendant—Direct

time after the end of NRA? A. I do not know that it was used. It was printed up in this form before the Supreme Court had declared the whole NRA law unconstitutional, and therefore it had some of these forms and it might have been that it was used to contract for a few showings until they got a new start of a different contract. I think probably that is what happened.

Mr. Wright: Well, that 1935-1936 form was the one that was used during the 1933-1934 and 1934-1935 season?

The Witness: Oh, yes.

Judge Hand: What is this the NRA form?

Mr. Seymour: The NRA form.

Q. Now, following the discontinuance of the use of the form which is in evidence as P-11, has there been any uniform contract for the distribution of motion pictures?

Mr. Wright: If the Court please, I think that is a conclusion that this witness should not be permitted to draw. It can only be determined by an examination of the forms used as to the extent or non-extent of uniformity.

(1299) Mr. Seymour: It is a question of fact.

Judge Hand: Overruled.

A. No, there has been no uniform contract. Paramount has drawn its contract without regard to anybody else's contract. We endeavored to preserve so much of the text and substance of the prior form that the exhibitors had indicated approval of as we could. Now, if others did substantially the same thing, well I don't know it.

Q. Is there not any agreement or understanding among the defendants or with any other distributors, as to the use

Austin C. Keough—By Defendant—Direct

by Paramount, or, as far as you know, any other distributor, of a standard or uniform contract, license contract? A. There is not. I speak for Paramount. I know nothing about anybody else.

Judge Hand: Well, you must know the contracts where your theatres are exhibiting other people's pictures? A. They bear only very general relationship with each other, general similarity; because they all have to deal with the same subject matter; but the various companies, their salesmen or their counsel, decide what will be the most attractive as a sales instrument for their company, or what the company needs for its protection. They vary.

Q. Would you tell us generally, Mr. Keough, how that license form is used? A. Speaking about Paramount?

Q. Paramount. A. After the Paramount sales representative, whether he be a sales manager or divisional manager (1300)

or branch manager, has reached a stage of agreement on the pictures to be licensed to the particular customer, and the terms thereof, these printed forms are generally used to put those terms down. And if the general form has not enough space on it to write all the terms that they have negotiated, they use an extra form or they use a piece of paper; or if they are dealing with perhaps a circuit, a large number of theatres, they might write it up separately, and then refer, as part of the contract, to the Paramount's form, whether it is the form that we now use that I drew, or the longer one; but that form as to the mechanical terms, I will say, the forms that represent the legal rights of the parties as distinguished from the dollars and cents terms, and pictures and clearance and what not—that forms part of their contract either by actual physical incorporation, reference; or some-

Austin C. Keough—By Defendant—Direct

times the deal is made orally. There is such a thing in this business as spot booking. A fellow calls up and he wants a picture in a hurry. There is no contract that is executed for it. You trust him. He gets the picture, he sends in a check for it, he has got a credit, and you get no signature out of him. You may make some kind of shorthand memorandum in the exchange, but the terms on which that is done, if not articulated and expressed, as far as the exhibitor understands, because he has dealt with us, are our contract. (1301)

Q. Now, I would like to ask you about some particular provisions of the Paramount license contract which you have and with which you are familiar. First, why does the contract contain a provision for minimum admission prices?

A. Are you speaking of the current contract or all the contracts that I have been testifying to—

Q. Such a provision has been in the Paramount contracts for many years, has it not? A. There used to be a—

Judge Hand: He has asked you a question. Answer it directly.

The Witness: I am trying to.

Judge Hand: He asked "has it not".

Q. Hasn't such a provision been in the Paramount contracts for many years? A. I think I can answer that yes.

Q. What is the reason for it? A. The reason is twofold: in the early contracts—and I speak of contracts that went back to 1918, 1919, 1920, which dealt with flat rentals—there was a minimum admission of 10 cents. That had nothing to do with the percentage. That had to do with the prestige of the picture. 10 cents was the very minimum admission price, and if the exhibitor wanted to have a Paramount picture he would charge at least 10 cents for it and as much more as he wanted. When Paramount entered into a per-

Austin C. Keough—By Defendant—Direct

(1302)

centage contract with an exhibitor, its reward for making the license depended upon the amount of money that was taken in. Now, if the exhibitor in negotiating said he could afford to pay a certain percentage but not another percentage, and he could afford a certain split but not another split, based upon what his policy was, what his admission prices were, what his take was, — that was one of the terms, one of the representations that were written down into the contract. So that after the contract was made Paramount could get an accounting of so many dollars on the basis of what the exhibitor said that he was going to produce, not some other figure that he decided to change in the middle of the engagement. So that the form of contract from the early one to the present time, whether it is percentage or flat rental, has a provision in which the exhibitor agrees to charge certain admission prices as the minimum. Sometimes those blanks are filled in; sometimes they are not filled in. Sometimes they are not filled in because, well, the exhibitor is charging, say, 25 cents, and you do not need to put in a 10-cent minimum because you know what he is doing. Usually they are filled in where you have a percentage engagement. Where you have a flat rental engagement they may or may not be filled in. Now, that is the reason for putting them in the contract.

Q. Do you consider that the provision for a minimum

(1303)

admission price is a necessary protection to the copyright owners? A. Absolutely.

Q. Now, reference has been made here to the fact that in the license contracts, including the license contracts of Paramount, there are provisions for auditing the exhibitor's books in connection with percentage contracts. Did you have anything to do with the inclusion of those provisions? A. I did. Those contracts I drew and passed upon and approved.

Austin C. Keough—By Defendant—Direct

Q. What was the purpose of them? A. To make sure we were getting an honest count, an honest report.

Q. Was it used for any other purpose? A. Not that I ever heard of.

Q. And is it only as to the exhibition of the distributor's own pictures? A. Yes.

Q. Have you had any experiences with exhibitors who have not returned the full amount of revenue which they should to the distributor? By "returned," I mean paid. A. Very considerable experience.

Q. Is the right of audit any protection against the exhibitor in that respect? A. That right of audit has actually disclosed, where no other means is available, the complete misstatement or misrepresentation to Paramount of the actual business done on which we should have had an accounting, and on which we did not get an accounting, or (1304)

we got a false accounting. The audits disclosed that. Sometimes the audit was one that we got because the exhibitor honored the clause and permitted it; and other times we had to go to a court of equity to get it, and did.

Q. Now, do you remember that at about 1936, Mr. Keough, there was a suit in this court entitled United States vs. Warner Bros., involving a charge with reference to St. Louis? A. Yes.

Q. In connection with the discontinuance of that suit by the United States, did the Attorney General insist that certain defendants in that case grant 10-year franchises to exhibitors?

Mr. Wright: If the Court please, I do not understand what the relevance of this line of inquiry is. The facts of the settlement, I suppose, are of record here in the court and judicially noticeable.

Mr. Proskauer: I can't hear you, Mr. Wright.

Mr. Hand: I will allow it.

Austin C. Keough—By Defendant—Direct

A. He did.

Q. And did certain of the defendants in that case grant such 10-year franchises? A. They did.

Q. Did Paramount grant a 10-year franchise? A. It did not.

Q. Did Paramount decline to do so? A. It did.

Q. And was that suit discontinued after certain of the (1305) defendants had granted franchises as requested by the Attorney General? A. One event followed the other. It was discontinued.

Q. Mr. Keough, from time to time since your connection with Paramount began, Paramount has acquired interests in groups of theatres, sometimes known as circuits, has it not? A. It has.

Q. Now, do you know whether or not in connection with such acquisitions it has met competition from other distributors?

Mr. Wright: If the Court please, that is a conclusion that is entirely too general for him to draw. He can state what the facts were in connection with the acquisition but not a conclusion of this sort.

Judge Hand: Read the question.

(Question read.)

Mr. Seymour: I am going to follow it with a little detail.

Judge Hand: Overruled.

A. I do know some instances.

Q. Now, can you mention any circuits for which Paramount negotiated sometimes successfully and sometimes unsuccessfully where other distributors were also attempting to obtain an interest in the circuit? A. I recall that in the

Austin C. Keough—By Defendant—Direct

middle '20s there was a Sachs Circuit of theatres in Milwaukee, and Paramount was very much interested in acquiring either an interest in the circuit, or the circuit. It had no theatres there. And we did not acquire it. A competitor—I don't remember now which one of the companies, Warner's or Fox—got it in competition. They outbid us. We wanted it and did not get it. That is one.

Q. Now, can you tell us about any others where perhaps you were able to get the circuit? A. The Comerford Circuit is another I know of. Mr. Comerford and his associates, because of old—

Judge Goddard: A little louder, please.

A. (Continuing) —because of old friendship with Mr. Zukor and Mr. Sidney R. Kent, desired in 1930 to sell their business, and they wanted to sell it to Paramount, and Paramount wanted to buy it, and Warner Bros. wanted to buy it, and we prevailed in that competition. We got the circuit. And one other instance which comes to my mind has to do with the theatres in Minneapolis and St. Paul where the Fox Theatre Company, I think it was, William Fox's Theatre Company made an effort to buy the circuit of Ruben & Finkelstein, and they wanted Paramount to give up, in order to allow them to do it, to give up some management veto we had or approvals we had of the principal downtown (1307)

theatre that showed Paramount pictures. We did not do it, and Fox did not get the theatre, and we did.

Mr. Wright: May we have the date on that?

The Witness: It was around 1929. I think it was in 1929.

Q. How about the Kunsky & Trendle Circuit? A. Well, personally I have no knowledge of that. It is hearsay.

Austin C. Keough—By Defendant—Cross

Q. How about the Blank Circuit? A. Again I was informed. I personally did not know about the Blank Circuit.

Q. Did you know anything about any of the theatres in Florida? Was there any competition there that you know of? A. Well, there was competition for the acquisition of E. J. Sparks' interest whom we bought out. He owned half of the company, and we met competition in buying that half.

Q. Competition from one of the other distributors in this case? A. Yes.

Q. How about the Saenger Circuit in New Orleans? A. Yes. There was at least one company, one of the large distributing companies, with theatres, that was eager to acquire the Saenger Circuit, when Paramount acquired it instead.

Mr. Wright: Can we have the dates on all of these?

(1308)

Mr. Seymour: The interrogatories give you the dates.

The Witness: The Sachs that I gave you was somewhere in the middle '20s, 1925 or 1926; and the other one was 1929; and the one from Mr. Sparks was about 1935 or 1936. It was at the time that—oh, wait a minute. It was after the consent decree. Sparks had been our partner at the time. It was either in 1940 or 1941 that we bought him out in competition.

Mr. Seymour: You may examine, Mr. Wright.

Cross Examination by Mr. Wright:

Q. That Saenger Circuit acquisition that you referred to, that was at what time? A. The year 1929.

Q. That was 1929? A. Yes.

Q. Now, this competition that you were referring to in connection with the Sparks Circuit, you say that occurred in 1940 or 1941? A. Yes.

Austin C. Keough—By Defendant—Cross

Q. That was the situation where you owned how much?

A. We owned half.

Q. You owned half of the Sparks Circuit? A. Yes.

Q. And you say there was competition between you—

A. To buy the other half.

Q. — and another distributor to buy the other half?

A. Yes.

Q. That is, one of the other distributors wanted to be—
(1309)

come a partner with you in the circuit— A. Wanted to buy Mr. Sparks' interest.

Q. And you were in competition with him for the privilege? A. Yes.

Q. What distributor was that? A. Either Fox or Warner.

Q. Well, do you know? A. Well, I don't remember at this moment.

Q. Well, as a matter of fact, you don't have any personal knowledge, do you, of the dealings between Sparks and either of them, do you? A. Well, I happened to have been intimately engaged with the whole negotiation. No, I did not talk to any Warner Bros. man who came in in my presence and said "I will offer you."

Q. What was at stake was the acquisition of an interest by another distributor in the circuit in which you already had at least a negative control, isn't that right? A. We had a negative control only as far as acquisition of theatres. We had no negative control whatsoever as to the operation of the theatre. By the very structure of that company that was in Mr. Sparks' hands, and had anybody bought that, they would have been sitting in Sparks' position.

Q. Now, that first license agreement that was offered here—I think it is identified as P-5—which is the 1918 agreement, I see the protection provision that you referred to is
(1310)

added there in typing. There is no agreement, is there, that

Austin C. Keough—By Defendant—Cross

you can point to in the printed provisions which provides for any protection or clearance? A. Not in the exhibit, and I don't know whether there is in any of the others. I don't know.

Q. I take it the exhibit, the printed form, is the form of license agreement that was customarily used at the time, is that right? A. That is my information. There are tens of thousands of those papers filed in the warehouse, and that happens to be one out of several that we found. As far as that printed form is concerned, there is no provision for clearance; it does not say clearance; it does not say protection. It is written in there in type.

(1311)

Q. I say, and the printed form that you have identified here is the form of agreement that was customarily used in licensing your pictures at that time, isn't that right? A. It was the printed form that was customarily used.

Q. Yes? A. Yes.

Q. I think you referred to one form that was not marked here. You said in connection with your testimony on this P-10, which I think is—that is the agreement you were using in 1926; or would that be 1928? I see it has a rider on it relating to sound. A. May I look at it?

Q. Better look at it, yes. A. This is the 1926 form which was a modification of the 1923 form. It is still in use in 1920—whatever that date is.

Q. You referred to another form which you said Paramount also used at the same time but I don't believe it was marked. What was the difference, if any, between the other form you referred to and this one? You said you sometimes used this and you sometimes used another, which was not marked.

Mr. Davis: Will the record show which forms Mr. Wright is referring to?

Austin C. Keough—By Defendant—Cross

A. Here is the form that I referred to as having been used and at the top of the printed form, instead of the words "Standard Exhibition Contract" are the words "Exhibition (1312)

Contract", which was intended to indicate it was not standard, and I don't know exactly, without comparing them, what the differences were. There probably weren't very many.

Q. You don't know what if any—whether any—were of substance at all? Do you know what the purpose of having the two forms was? A. No, I don't. I don't remember what that was.

Q. Sometimes you used one and sometimes the other without any particular reason? A. No, I think there was a reason at that time. That 1926 contract is the one that was stricken down by the Supreme Court. Now, at some time, either immediately following that—we put this other form into use and obviously that was not in the year 1926 because in the year 1926 we were using uniform or standard forms of agreement, and we did so until the Supreme Court told us that we shouldn't do it.

Judge Hand: That is P-8?

Mr. Wright: No, the one I was just asking him about was not marked at all. He had referred to it in his testimony, and that one I have in my hand. That he said is similar to P-10, which is described as the 1926 agreement.

Q. You were not licensing sound pictures, were you, in 1926? A. No.

Q. I wonder if this form you have, marked P-10, that you (1313)

referred to as the form of that date, is not actually a later form? A. No, the form P-10 is the form adopted in 1926 and continued to be used from 1926 through the years until the

Austin C. Keough—By Defendant—Cross

Supreme Court said that the use of this contract, with its arbitration clause, which is Article 8, was illegal. Now, we used exactly the same form but we dated it according to the year of the release and we printed the number of the different —this form was used in 1926, 1926-27, 1927-28, and you will find sound probably came in in 1927.

(Marked Defendant Paramount's Exhibit P-12.)

Judge Bright: Which is P-12 now, this one that was used at or about the same time?

Mr. Wright: No, I had it marked so that we could know.

Q. This agreement that has just been marked for identification as P-12 is the agreement which you used following the court decision which superseded that P-10 that Judge Bright had? A. That is right. The arbitration clause is entirely different and the sanctions behind the arbitration clause were missing.

Q. Then the form that you have there, marked as P-12, continued in effect until this form P-11 was introduced during the NRA period, is that right? A. No.
(1314)

Q. Was there an intervening one there? A. The 555, which is Federal Trade Commission, succeeded this in 1928.

Q. Can you tell me which one of these followed the use of the form marked P-12? A. P-8—

Q. P-8? A. No, I am wrong. Not here. Not here. I don't see it among these papers at all.

Q. We will pass that for the moment. Can you recall when you first started to use clearance provisions which referred to the prices to be charged by theatres other than those which signed the license in question?

Austin C. Keough—By Defendant—Cross

Mr. Seymour: I object to that as assuming something that, as far as I know, is not in evidence.

Mr. Wright: There are a very great number of them in evidence in the form of answers to the interrogatories and in actual agreements in evidence.

Mr. Seymour: I think you ought to direct the witness's attention to any particular one because I do not know of any such. Perhaps there are.

Judge Hand: Overruled, go ahead.

Q. Generally, I am referring to the situation which says the first-run shall have so many days clearance over 30-cent theatres and so many over 40-cent, that sort of thing.

Mr. Seymour: That is not what you said in your question.

(1315)

Mr. Proskauer: Not at all.

Judge Bright: Re-ask the question, will you, and then we will get it the way you want it.

(Record read.)

A. I can't fix it without some reference to something but my impression, subject to my checking up on myself, is that somewhere in, oh, around the, say, year 1924, 5 or 6, in certain places that became the nature of the clearance or protection agreement negotiated. From that it just grew. I don't remember definitely where the first instance was.

Q. You don't have any doubt, do you, that where the agreement says so many days over theatres charging a certain admission price that that refers not only to those which may belong to the first-run theatre operators but any theatres regardless of who operated by, charging this price, isn't that right? A. It certainly refers—

Austin C. Keough—By Defendant—Cross

Mr. Seymour: May we have that question read because the distinction that Mr. Wright is blurring is important.

(Question read.)

Mr. Seymour: If your Honor please, I do not like to object to the question but there is obviously a difference between a situation where the contract requires a theatre to charge a certain price and where it says something will happen if it charges a certain price. Mr. Wright ought not to attempt to interpret
(1316)

that in his question. I do not object to his asking about the practice.

Mr. Wright: Frankly, I was a little shocked at the suggestion of counsel that there were no agreements in evidence which referred—in which there was first-run clearance which referred—

Judge Hand: Overruled, you may answer.

The Witness: Well, would you please read the question, after all this colloquy?

Q. I say, where—

Judge Hand: You don't gain anything by so many objections and so much colloquy. It is a waste of time. It can be straightened out on direct or in some other way, and I am getting sick of it.

A. Perhaps this will answer the question, if I understand it. When Paramount writes into a contract it makes with Exhibitor A a clearance provision that says Exhibit A will have so many days clearance following the end of Exhibitor A's run on that Paramount picture over any theatre charging an admission price of less than 25 cents, to take a

Austin C. Keough—By Defendant—Cross

hypothetical case, if it is as broadly stated as that in the contract, that is typed out, written up by the salesman, not a lawyer, salesman, both the salesman and the exhibitor understand that Exhibitor A will have 30 days clearance on that Paramount picture over every theatre in the area that (1317)

they regard as competitive to the first-run account which charges 25 cents. *In other words, Paramount thereby agrees that this first-run account of its choice, to whom it has granted the license, will not, after the conclusion of that run, exhibit or license the exhibition to any theatre that charges less than whatever that stated price is in an area. Now, sometimes they are meticulously careful and they describe the area; sometimes they do nothing about it, they understand what they are talking about.

Mr. Proskauer: Won't license it for the 30 days?

*The Witness: Won't license it within 30 days, within the 30 days stipulated clearance, to a theatre which charges less than whatever the stated price is in that particular contract.

Judge Hand: We will take a recess until 2.15.

(Recess to 2.15 p. m.)

(1318)

AFTERNOON SESSION

AUSTIN C. KEOUGH, resumed the stand

Mr. Wright: We have no further cross-examination.

Judge Goddard: Mr. Seymour, are you going to give us any instances of where independents get theatres away from Paramount? You have given us instances of where some defendants did.

*See clarification at printed record page 2488 *infra*.

Austin C. Keough—By Defendant—Redirect

Mr. Seymour: Your Honor means where there was competition between Paramount for acquisition of interest in a circuit, and the competitor was an independent circuit? .

Judge Goddard: Yes.

Redirect Examination by Mr. Seymour:

Q. Do you know of any such, Mr. Keough? A. Well, I think I suggested one situation which was during our bankruptcy where we lost a circuit of theatres that we formerly had owned out through Indiana and Ohio, the so-called Fitzpatrick and McElroy Circuit, and we lost that and to an independent in competition with us.

Now, I will have to search my memory and records to see whether there are other instances. That occurs to me immediately.

Judge Goddard: Was that where the theatre was sold to a higher bidder?

The Witness: It was a circuit of theatres sold to a higher bidder, yes. We wanted the circuit, and we

(1319) just did not have the resources to get it, and the independent who still operates it, I believe got it.

There was another one we tried to get after it. We had a theatre in Gary, Indiana, a very fine theatre, and there that was taken away from us in competition. We later, years afterwards, went into Gary, Indiana, with a theatre, and we have been operating it competitively with that; and the fact of that competition, and the whole background and history of that is of record in the courts, litigated, and the decision described and justified the situation and the competition. We lost out in competition. That was an independent.

Austin C. Keough—By Defendant—Redirect

Q. Mr. Keough, can you think of any instances where a theatre-operating company in which Paramount had an interest lost leaseholds or leases of theatres to independent theatre operators? A. Well, I don't like to mention the most recent one, the most recent of instances, which was referred to the other day, in Taunton, where Paramount's subsidiary had been the lessee for years of a certain theatre, where an independent bought the theatre in competition right from under them. That is a recent one.

Mr. Wright: Can you name that, please, so we know what you are talking about?

The Witness: Well, the theatre that I refer to is (1320)

the State Theatre, in Taunton, Massachusetts.

Q. The Strand Theatre, Mr. Keough. A. The Strand Theatre. That was it. The Strand, not the State. And that theatre was operated in competition. An independent got it away from one of Paramount's companies.

Q. Have there been other instances of that? A. Well, it is rather dim in my memory that there have been. I would have to go back and check my records, but I am very sure that there have been, yes.

Q. Now, with respect to the matter about which Mr. Wright was inquiring of you just before we recessed—that is, certain clearance terms which he referred to—have you participated in negotiations with exhibitors at which the clearance terms have been the subject of discussion? A. I have.

Q. And have you participated in negotiations at which clearance terms, such as those you were discussing with Mr. Wright have been discussed? A. I have.

Q. Can you tell us what the nature of those negotiations has been? A. First of all, there are those negotiations in which I participated in which Paramount, the distributor, was bargaining with an exhibitor, and from time to time

Austin C. Keough—By Defendant—Redirect

there had been different exhibitors, about the terms of the contract, one of the terms of the contract being the clearance (1321) —

which the exhibitor sought to obtain from Paramount and which Paramount argued about as to whether it should give it, whether it was reasonable and fair to Paramount and Paramount's other customers, and the factors brought out in that discussion as to the clearance requested and ultimately granted in the requested or some modified form was the relation between the admission prices of the theatre that had the prior run and the theatres that had, or would, or might receive the next run or runs, and the bearing of a time element on the value of the contract sold to the prior run, I mean, the good will that went with the license, the prior run's ability to get the most out of the showing, in order to give Paramount what Paramount was insisting should come out of that showing, whether it was on a flat rental or whether it was on a percentage or a combination of both.

The discussions concerned a request by the prior exhibitor for a longer period of time to elapse between the finish of his exhibition and the start of any other exhibition at certain admission prices. The higher the admission price, the less time they thought was necessary; the lower the admission price, the longer they thought they would get.

In those discussions, and they were discussions, arguments and negotiations in which I participated, they finally came to a conclusion that a certain thing was all right and a (1322) —

certain thing was not all right, and would not go for it, Paramount would not go for it. That is the way they wound up.

Q. In the course of those negotiations were the terms of the license to the prior run conditioned on Paramount exacting any particular admission price or any admission price minimum from the subsequent-run exhibitor?

Austin C. Keough—By Defendant—Redirect

Mr. Wright: It is pure argument. I don't think it is a proper question.

Judge Hand: Overruled.

A. No, there was no argument about what Paramount should require of any subsequent run. The whole position was that if Paramount elected to sell a second-run or a subsequent run, where the first admission price was, say, 50 cents, or 40 cents, well then, one lapse of time seemed reasonable; if it was 25 cents, another lapse of time seemed reasonable; if it was at a great distance, the exhibitor sometimes said, "Well, we ought to have a clearance over that." And Paramount said, "No, we don't agree with you, and we won't grant it," or we did agree and we did grant it.

So it was only a question of what the time lapse would be in the event that Paramount made a sale. They were perfectly free to make a sale.

Q. After the decision of the Supreme Court in U. S. v. (1323)

Interstate came down, did you have occasion to consider whether the clearance provisions, about which you testified under examination by Mr. Wright, were proper in the light of that decision? A. I did.

Q. Did you reach a conclusion on that subject? A. I did.

Mr. Wright: If the Court please—

Judge Hand: I think I will sustain an objection to that.

Q. Did you give any instructions with respect to the clearance terms based upon the decision in U. S. v. Interstate? A. I gave some oral instructions. I don't recall whether I gave any written instructions to Paramount sales organization.

Q. Will you tell us what those instructions were.

Austin C. Keough—By Defendant—Redirect.

Mr. Wright: We object to what internal instructions were given. I do not see how it has any bearing on any issue.

Judge Hand: I think that is proper. Go on.

A. I advised or instructed Paramount's sales organization that as long as Paramount, the distributor, determined by itself what it was willing to give in the way of clearance, it was perfectly proper to measure the clearance, and state it in its contract with its exhibitor, by the admission price which the exhibitor would charge, the subsequent-run ex-
(1324)

hibitor would charge, and I told them that the facts as were set forth in the Interstate case were a different set of facts, talking about Paramount itself fixing its own terms, even when they were requested, and all by itself, with an exhibitor, and I instructed them to act accordingly.

Q. Did you instruct them that the clearance might be measured by what the subsequent-run exhibitor was charging or what he agreed to charge?

Mr. Wright: I object to what instructions were given. I object to putting any more words in his mouth.

Judge Hand: Read the question.

(Question read.)

Judge Hand: We will allow that.

A. My instructions covered both. For example, in the ordinary exhibition of a picture, an ordinary Paramount picture, the exhibitor had his own stated standard admission price which he announced to the Paramount salesman, and if it was a percentage contract, it was fitted into that contract, and a clearance was measured in time by what some subsequent

Austin C. Keough—By Defendant—Redirect

competing exhibitor would charge. That was written in and that was his price. When there were specialties, pictures that were large in size, money and scope, and a peculiar kind of exploitation was planned for them, something like in former days they called a road show, where the picture was shown (1325)

first in a limited number of theatres provided the exhibitor charged a higher admission price, then that was written into the contract. That price was not necessarily the price that the exhibitor then had in effect. It probably was not. If his price was 50 cents and the picture was to come to him in a limited period, say six months before the rest of all the first-run accounts, he got it, if he charged a dollar, for example, or 75 cents, or whatever it was, and if he did not want to charge that he did not get it then, and he got it later at his own admission price. Paramount then announced its policy and said, "If you want it on these terms, you contract with us to charge that admission. If you don't, why, you will have to wait until later."

Q. As a matter of fact, Mr. Keough, the consent decree in Section 8—the consent decree in this case—mentions the admission prices of the theatres involved as one of the elements in determining whether clearance is reasonable; does it not? A. Not only does, but, on the thing that I am speaking about, it speaks about special exhibitions, with or without the clearance terms.

Q. I neglected when you were in direct, to ask Mr. Wright to stipulate as he has in connection with the other witnesses, since Mr. Zukor, that if asked you would answer in the negative the questions negating conspiracy which I asked Mr. (1326)

Zukor. I assume Mr. Wright will stipulate, so I won't have to put those questions specially.

Mr. Seymour: Do you so stipulate, Mr. Wright?

Mr. Wright: Yes.

Austin C. Keough—By Defendant—Recross

Mr. Seymour: And that stipulation as the same effect as if I asked the witness on the stand?

Mr. Wright: Yes.

Mr. Caskey: One question.

By Mr. Caskey:

Q. Mr. Keough, there is one question I want to ask you. As I understand it for some years there was included in the Paramount contracts a provision that the exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than 10 cents, was there not? A. Yes. (1327)

Q. And that clause was in the so-called standard exhibition contract of May 1, 1928? A. I think it was.

Q. Now, did that clause have anything to do with clearance or protection? A. No, I think I testified this morning that that had to do with prestige. That was a minimum 10 cents admission which we had in our Paramount contracts as early as 1919 or earlier.

Q. And subsequently to 1928 in some contracts that minimum was raised from 10 cents to 15 cents, was it not? A. In some Paramount contracts?

Q. Yes, sir. A. It may have been, I don't recall. I don't remember whether Paramount ever raised it to 15 cents as a minimum as a standard practice. I doubt it.

Recross Examination by Mr. Proskauer:

Q. Mr. Keough, in giving your testimony you referred to the introduction of talking pictures by my clients, Warner Bros. Do you remember that? A. Yes, sir.

Q. And that was in about what year? A. Around 1927. 1926 or 1927.

Q. Now, from your general knowledge of the industry I am going to try to elicit some things which I think are

Austin C. Keough—By Defendant—Recross

not controversial, but I want to have them in the record. It was necessary in order to show a sound picture to have some special equipment in the theatre, was it not? A. It was.

(1328)

Q. And practically no theatres in the country, or, indeed, no theatres in the country at that time had that equipment?

A. Well, when sound flashed upon the industry there was not any equipment in the theatres.

Q. Yes. Do you remember approximately what it cost at that time to put that equipment into a theatre? A. My recollection is that the cheapest form of equipment that was furnished either by the Western Electric Company or the Radio Corporation, RCA, was about \$25,000. That is, the reproducing equipment.

Q. Now, at that time Warner's was still a small company, weren't they? A. Well, when they adopted sound they were a very small company, yes.

Q. And they had no theatres? A. No, not that I ever heard of.

Q. And in order to exploit sound, which you told us they were a year ahead of their competitors with, they had to get theatres to show those pictures in, didn't they? A. Well, there had to be theatres that were equipped with this rather expensive equipment in order that Warner Bros. who had the sound pictures could get a customer for them.

Q. Exactly. And the theatres that were owned by their producing competitors, like your company, they were not available for the exhibition of those sound pictures, were (1329)

they? A. With a very few exceptions the theatres that Paramount was interested in, as well as the other theatres of the same quality and standing, had no such equipment, because at that time they did not believe that the thing was permanent. There was an exception, however, in the case of E. J.

Austin C. Keough—By Defendant—Recross

Sparks' theatres in Florida, in which Mr. Sparks was the managing principal partner with Paramount. He had a vision. He rushed out and he got as many equipments he could in a few theatres—there were not very many of them—and he, I think, was the only one who had that vision that this was going to be something he could spend money on, and he did.

Q. Sparks had just a few theatres locally in Florida?

A. He had a few theatres, but he was the only one I can think of who really was interested in sound at that time.

Q. And do you recall that it was at that time that Warner's went through with their transaction with First National and Stanley by which they acquired theatres? A. That was the time at which they got the theatres, yes; started to get them.

Mr. Proskauer: That is all.

Mr. Seymour: Are there any further questions of Mr. Keough?

Mr. Wright: I have some.

(1330)

Recross Examination by Mr. Wright:

Q. This situation that you spoke about at Taunton, Massachusetts, do you recall when you lost the lease on that Strand Theatre? A. Yes, some time back in the beginning of 1945.

Q. It was before that, was it not? It was the Fall of 1944, was it not? A. It may have been.

Q. And that was a theatre in which Paramount had been serving pictures to? A. That was one of two theatres in Taunton, Massachusetts, where Paramount's partly owned subsidiary had been the lessee of for a long number of years.

Austin C. Keough—By Defendant—Recross

Q. Well, can you answer the question? A. Yes, I will answer the question. Paramount had shown in that theatre the less attractive of its pictures year after year in that Strand Theatre.

Q. First-run? A. First-run, yes.

Q. By the way, who was the lessee that took it over after you got it? A. Well, it probably has some corporate name, which I don't recall. Mr. Donald Jaycox was the personality, the owner, probably the stockholder:

Q. And then after he took over that theatre, did Paramount make any of its pictures available to him for first-run exhibition in that theatre? A. I don't think we did.
(1331)

Q. You know you did not, don't you? A. No, I don't know that we did not. I told Mr. Jaycox's counsel that he could hardly expect Paramount to supply him with pictures when he went in and took the theatre that we had a lease on and were perfectly anxious to renew on terms as good if not better than he offered—

Q. Well— A. Please—

Q. I did not ask you for the conversation you had with counsel. If you will just listen to the question and then give the answer we will get along faster. The theatre then remained closed, did it not, for a substantial period of time after the lease had been acquired by Mr. Jaycox? A. The theatre was closed and repaired or redecorated or reconstructed, opened with one picture for about a week, then closed for some months.

Q. And that was when, when it was opened for a week and then closed? A. Well, in the Spring of 1945, and thereafter it was closed. I mean, don't hold me to a precise date. It might have been April, March, May; whatever it was.

Q. And do you know the reason why it was closed? A. I know the reason that was described to me by Mr. Jaycox's counsel, and that was that he could not get pictures.

Austin C. Keough—By Defendant—Recross

Q. And you know, as a matter of fact, that it was not (1332)

offered any pictures on first-run by the other major distributors whose product had played there when Mullin & Pinanski had it, is that right? A. My information is quite to the contrary.

Q. In any event, the theatre stayed closed. Then there was a lawsuit filed in which you were a defendant? A. That is right.

Q. And that suit named as parties your company and Mullin & Pinanski and the other major distributors. A. That is right.

Q. And then that suit was settled? A. It was.

Q. And under the terms of the settlement Mr. Jaycox was to have certain major product first-run in that Strand Theatre? A. As far as the immediate contracting for pictures was concerned, that is true. I don't remember just what product is being sold to him. Some of the product that is being sold to him as the result of that settlement was product that was offered to him before he even began his suit.

Q. In any event, as the result of the settlement he is now entitled to play certain product on first-run that was not available to him before? A. Well, he has contracts to them. I don't know whether he is entitled to play them. He is entitled to play what he has got contracts for.

(1333)

Q. Then I think you referred to this Gary situation where you say a Mr. Young obtained certain theatres which you had formerly operated. A. I did not name the man, but Mr. Young is the exhibitor in question.

Q. And then at a later time you, or, rather, Balaban & Katz went back into Gary, is that right? A. Balaban & Katz went into Gary and built a theatre or had a theatre built for it.

Q. And when was that? A. Oh, 1934, 1935; somewhere along there.

Austin C. Keough—By Defendant—Recross

Q. And then do you recall that Mr. Young had a conversation with you and Mr. Barney Balaban as to what was going to be done with reference to a Paramount product in the town which he had been playing after you had the theatre there? A. I remember, yes.

Q. And do you remember that in that conference Mr. Young asked Mr. Balaban whether he could get the Paramount pictures, and that Mr. Balaban said he did not know, but probably not; that that was up to the theatre department in the distribution of pictures? A. Mr. Balaban—

Q. Just answer the question. A. Well, the answer is no.

Q. I call your attention to what purports to be a transcript of testimony or a page of the proceedings Paramount Pictures, Inc. et al. v. William Langer, et al., of June 18, (1334)

1938, and ask you to read page 997, and call your particular attention to the testimony near the bottom of the page.

Mr. Seymour: Whose testimony is it, Mr. Wright?

Mr. Wright: That is Mr. Keough's testimony.

A. I read what purports to be my testimony, transcribed in the so-called North Dakota case.

Q. That is what that is you have in your hands, yes. A. Yes, I recognize it. Where do you want me to start reading?

Q. I just want to call your attention to the part I just read to you; that is down the lower part of the page there; see if you still adhere to your testimony that that is not a correct version of the conversation you then testified to. A. (Reading.) "Again Mr. Young asked about the Paramount pictures, and he said he felt that Paramount shouldn't have come into the town and taken an interest in the other theatre"—

Mr. Wright: No. Let me have this.

The Witness: I am sorry.

Austin C. Keough—By Defendant—Recross

Q. Is it not a fact that in that proceeding you testified as follows:

"The conference then broke up, and as it was breaking up, Mr. Young again asked Mr. Balaban whether he could get the Paramount pictures, and Mr. Balaban said he didn't know, but probably not, that that was

(1335)

up to the theatre department in the distribution of pictures."

A. It is not so that I so testified.

Q. That is not your testimony? A. That is not my testimony; and where "the theatre department" is transcribed in this record, it should have read—and I did so testify—"the distribution department."

Q. Other than that is that a correct statement as to what transpired at the meeting? A. Yes, sir.

Q. Did Mr. Young get the pictures? A. He did not.

Q. And they played at the Balaban & Katz house, is that right? A. They played at the house in which Balaban & Katz and an independent were the operators.

Mr. Wright: Will you read that last answer?

(Answer read.)

A. (Continuing) It was some Greek name, a man who was in the town already and who built this theatre, and who asked Balaban & Katz to take an interest with him. They did. That is the theatre.

Q. Balaban & Katz operated the theatre and he had an interest in it, is that right? A. No, I think he managed and

Q. What was the nature of the Balaban & Katz interest?

A. A stock interest.

Austin C. Keough—By Defendant—Recross

Q. Of how much? A. Maybe half. I don't remember what it was.

(1336)

Q. You don't remember what it was? A. Maybe two-thirds. It was a material interest.

Q. But after Balaban & Katz acquired the interest, whatever it was, from that time on the Paramount pictures were served to that theatre and not to Mr. Young, is that right? A. Oh yes, that is perfectly true.

Mr. Wright: That is all.

Recross Examination by Mr. Caskey:

Q. Mr. Keough, when you talked to Mr. Jaycox's counsel about this Taunton situation, did not his counsel tell you that Twentieth Century-Fox had offered to license to Mr. Jaycox exactly the same type of product for the Strand that had theretofore been licensed to the Paramount subsidiary?

Mr. Wright: That is objectionable. It is not competent for him to say what Mr. Jaycox's counsel said to him.

(1337)

Mr. Caskey: You brought it out, sir.

Mr. Wright: I brought out the fact of the terms of the settlement. That has nothing to do with prior conversation.

Judge Hand: Read the question.

(Question read.)

Judge Hand: You may answer.

A. Mr. Jaycox's counsel did tell me that.

Mr. Caskey: That is all.

Mr. Seymour: I have no further questions.

Austin C. Keough—By Defendant—Recross
Martin J. Mullin—By Defendant—Direct

Judge Bright: Which theatre was it that was referred to in Gary?

The Witness: I think the name of the theatre was the Palace Theatre in Gary, Indiana.

Judge Bright: Was there some litigation about it?

The Witness: Yes.

Judge Bright: In the Federal Court?

The Witness: In the Federal Court, yes. There were two different lawsuits.

Mr. Seymour: In which the defendants prevailed, is that right?

The Witness: In both of them the defendants prevailed in the Circuit Court of Appeals.

Recross Examination by Mr. Davis:

Q. May I ask you a question, Mr. Keough: Do you know (1338) whether or not before this conversation with counsel for Mr. Jaycox to which you just referred, Loew's, Inc. had already licensed Mr. Jaycox and contracts had been signed? A. No, I do not know that of my own knowledge.

Q. You do not know that? A. No, not of my own knowledge.

(Witness excused.)

Mr. Seymour: I will call Mr. Mullin.

MARTIN J. MULLIN, called as a witness on behalf of defendant Paramount Pictures, Inc., being first duly sworn, testified as follows:

Mr. Seymour: If the Court please, before I examine this witness, would it be agreeable to your Honors to recess at 4 today?

Martin J. Mullin—By Defendant—Direct

Judge Hand: Yes. I forgot to make an announcement. We are going to recess today at 3:20.

Direct Examination by Mr. Seymour:

Q. Mr. Mullin, are you vice-president and general manager of M. & P. Theatres? A. I am.

Q. Are you also vice-president of New England Theatres? A. I am.

Q. And are you an officer of a company known as Publix Notoco and president of its subsidiaries? A. I am.

Q. What is the business of M. & P. Theatres? A. It is a management company that manages a group of theatres in (1339)

New England.

Q. And New England Theatres is a company which owns theatres? A. It is.

Q. And is the stock of New England Theatres wholly owned by Paramount? A. It is.

Q. And does Public Notoco also own theatres? A. It does.

Q. And does Paramount have a 50 per cent interest in Publix Notoco? A. It does.

Q. And are the remaining stockholders of Publix-Notoco, with the exception of yourself and Mr. Pinanski people who have no connection with Paramount? A. They are.

Q. And then there are also subsidiaries of Publix-Notoco which own theatres, is that right? A. Yes, sir.

Q. And in those subsidiary companies Notoco has 50 per cent of the stock, is that right? A. Yes, sir.

Q. And the remaining 50 per cent is held by the people with no connection with M. & P. or with Paramount? A. Yes, sir.

Q. And New England also has certain subsidiaries in which there are stockholders with no connection with Paramount, is that right? A. Yes, sir.

Martin J. Mullin—By Defendant—Direct

Q. What does M. & P. stand for? A. Mullin and Pinanski.

Q. And does Mullin and Pinanski or M. & P. operate all the theatres in the group that I have just mentioned? (1340)

A. They do.

Q. Now, how are Messrs. Mullin and Pinanski compensated for their operating activities? A. Messrs. Mullin and Pinanski have a management contract, and their compensation is out of the profits of the theatres in which they operate.

Mr. Wright: Have you got a copy of the contract? Can't we have it identified?

Mr. Seymour: Mr. Wright, you are the most contract conscious man I ever saw. I will get it for you if you would like to see it.

Mr. Wright: It seems to me it would save time.

Mr. Seymour: I am just going to develop the fact that the upshot of all that is that Messrs. Mullin and Pinanski have an interest in the profits of the operation of those theatres.

Q. Is that right? A. Yes.

Mr. Wright: We haven't the faintest idea what the upshot of it all was without seeing the document.

Mr. Seymour: I will make it available to you, if you like.

Judge Hand: Well, he is going to make it available to you. Go on.

By Mr. Seymour:

Q. Now, how many theatres are there in the group (1341) operated by M. & P.? A. There are 94 theatres, 37 of them

Martin J. Mullin—By Defendant—Direct

that are owned 100 per cent by Paramount, and the balance in partnerships.

Q. In what states are those theatres located? A. The so-called New England States, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

Q. And how long have you been engaged with Mr. Pinanski in managing theatres in New England? A. I went to New England in 1931, and I have been there ever since; the latter part of 1931.

Q. When did you first become employed in the motion picture industry? A. I started in the Triangle Distributing Corporation in 1916; stayed there until 1919, when I went to Atlanta, Georgia, with Mr. S. A. Lynch, who organized the Southern Enterprises. I stayed there until 1925 when I came back to the New York office of the then Publix Theatres Corporation.

Q. That was a subsidiary of Paramount? A. Yes, sir.

Q. And you stayed there until— A. I stayed there until 1929, when I went to Minneapolis to operate the circuit of theatres there; and from Minneapolis to Boston, where I have been ever since.

Q. Now, do you know where the negotiations for and the licensing of film for the theatres in the group which you have referred to was done prior to 1931 or 1932? A. It was (1342)

done in the New York office of Publix Theatres Corporation.

Q. And did there come a change in that practice in 1931 or 1932? A. Yes, sir. In 1932 when Mr. Pinanski and I took over the operation of those theatres in New England, we started to do our buying and handle all our own records and so forth, in Boston; and have been doing so ever since.

Q. Now, were some of the larger theatres in New England in receivership up there? A. The largest circuit of theatres; the Olympia Theatre was in receivership or went into receivership in 1932. It remained in receivership for several years.

Martin J. Mullin—By Defendant—Direct

Q. That was a receivership proceeding in the State Court? A. In the Superior Court of Massachusetts, yes, sir.

Q. And Mr. Pinanski was one of the receivers? A. He was.

Q. Where are the negotiations for licenses for films from distributors other than Paramount conducted on behalf of the theatres which you operate? A. 60 Scollay Square, Boston.

Q. Whose office is that? A. That is the office of M. & P. Theatres Corporation.
(1342a)

Q. And with whom are the negotiations for the licensing of film conducted? A. The licensing of pictures is started by Mr. Stoddard, who is the chief film buyer for M. & P. Theatres, and who is in daily consultation with me on all film deals.
(1343)

Q. Before any film deal is closed, do you become familiar with it? A. Yes, sir, I do.

Q. Do you participate from time to time in the negotiations? A. Yes, sir.

Q. Do you license film from all the distributors? A. We do.

Q. With whom are your negotiations for the licensing of Paramount pictures conducted? A. Mr. Charles Reagan, general sales manager of Paramount.

Q. At the time you negotiate with representatives of Loew's, Fox, Warner or RKO, do you have any knowledge or information as to negotiations for, or film deals arranged for, the exhibition of Paramount pictures in theatres in which any of those distributors have an interest? A. We do not.

Q. Do you have any knowledge or information as to arrangements with distributors of pictures who do not have any interest in theatres may have conducted for the exhibition of pictures in the theatres in which defendants are interested? A. We do not.

Martin J. Mullin—By Defendant—Direct

Q. Is there any relationship whatever } so far as you are concerned, between the terms of film deals negotiated for the theatres which you operate and any negotiations and/or arrangements which are made for the licensing or exhibition of Paramount films in theatres of any other defendant in (1344)

this case? A. Mullin & Pinanski are only interested in our own circuit. We have no knowledge of that.

Q. Does the Paramount theatre department supply you with any information as to the negotiations or film license contracts made by any other theatre operating company in which Paramount has an interest? A. No, sir.

Q. Does the distribution department of Paramount furnish you with any information as to the negotiations or arrangements for the licensing or exhibition of Paramount pictures in the theatres in which any distributor has an interest? A. No, sir.

Q. Does the Paramount theatre department or any other part of the Paramount organization participate in your negotiations with representatives of distributors? A. They do not.

Q. Other than Paramount? A. Other than Paramount.

Q. And I think you have told us that the negotiations for Paramount films are not with the theatre department but with the distribution department? A. Mr. Reagan, general sales manager, yes, sir.

Q. Do you transmit to the Paramount theatre department the details of the contracts or arrangements which you have for the exhibition or licensing of the films of any other distributor? A. No, sir; those records are all kept in Boston. (1345)

Q. Does any official or employee of Paramount instruct, dictate or advise the terms of any film license contracts that you make or are to make with any other distributor? A. No, sir.

Martin J. Mullin—By Defendant—Direct

Q. Or as to who you are to deal with? A. No, sir.

Q. Or as to what pictures you are to license? A. No, sir.

Q. We have heard something about the way a film deal is negotiated from the point of view of a distributor. Are you an exhibitor? A. Yes, sir.

Q. Can you tell us, from the exhibitor's point of view, whether the negotiation of a film deal is a simple or complicated matter? A. Very complicated matter.

Q. Can you give us some idea of how long those negotiations take sometimes? A. Sometimes they take weeks.

Q. Do they take weeks with representatives of the distributors who are defendants in this case sometimes? A. Yes, sir.

Q. Is there any difference in the nature or quality or ardor of the negotiations for film licenses which you have with representatives of Loew's, Fox, Warner or RKO, and that with representatives of other distributors? A. No differences.

Q. Do you make a deal more quickly and more acquiescently when representatives of a distributor who is a defendant in this case is dealing with you? A. No, sir.

Q. Do you license the pictures of Loew's, Fox, Warner and RKO for all your theatres? A. No, sir.

Q. Are there theatres which are in the group you operate in which you would like to license Loew, Fox, RKO and Warner pictures, where you are unable to do so? A. A great many.

Q. In such cases do those products go to competitors of your theatres? A. Yes, sir.

Q. And are there cities in your territory in which you have a theatre and a defendant in this case has a theatre? A. Yes, sir, many of them.

Q. Do you operate some first-run theatres, so-called first-run theatres? A. Yes, sir.

Martin J. Mullin—By Defendant—Direct

Q. And do you also operate some subsequent-run theatres?

A. Yes, sir.

Q. Where Loew's has theatres in towns where you operate, are Metro pictures ordinarily shown in Loew's theatres?

A. Yes, sir.

Q. Where they do not have theatres, do they license those pictures to independent competitors of yours— A. They do.

Q. —sometimes? A. In some situations. Some spots they split the product.

Q. Who determines the admission prices which you (1347)

charge in your theatres? A. Mr. Pinanski and myself.

Q. When you negotiate a film license contract with a distributor, who tells the distributor what admission price is to be included in the contract as the minimum admission price for that theatre license? A. Generally that price is carried along. It is generally the same price that has been inserted from contract to contract. The distributor knows the price of the theatre that you are talking about and he generally has that inserted.

Q. Does the distributor tell you what price you are to charge? A. No, sir.

Q. Generally speaking, do you negotiate the clearance terms of your license contracts every time you make one? A. No, sir.

Q. Are they carried along from year to year? A. Carried along and generally understood.

Q. Once they are established? A. Yes, sir.

Q. And originally were they established as the result of individual negotiations with the individual theatres? A. I imagine so, before our time that they followed along the same lines.

Q. The clearance provisions were just continued as they were, is that right? A. Yes.

Q. Have there been some changes in them? A. There were considerable changes during the period of NRA, during (1348)

the arbitration and clearance committee set-ups.

Martin J. Mullin—By Defendant—Direct

Q. Have there been some changes since? A. Several changes due to arbitration, yes, under the consent decree.

Q. Do you change the admission price of your theatres regularly? A. We do not.

Q. Do you adhere to the same admission price over a considerable period of time? A. Yes, sir.

Q. And from the exhibitor's viewpoint, why do you do that? A. We think that the admission price is an established part of the theatre and we prefer to have that policy kept in force than constantly changing it. We think the constant changing of it confuses the public, confuses our patrons.

Q. What, if any, problems would it create in your business to change your admission price regularly? A. Well, we think that if you constantly change your admission price that people who come downtown might come to your theatre this week and find that the price is 50 cents. They may count on just spending 50 cents and may only have 50 cents, and if they come down and find the price is 75, they may take exception to the theatre and not come back again. They may go to one of our competitors, may like it over there a lot better than they do one of our houses. We keep our established price. We don't like the constant changing of it. (1349)

Q. Is that in your experience generally so of exhibitors?

A. That is generally so, yes, sir.

Q. Do you find in your business that the various distributors seek to license their pictures on what is called the preferred playing time? A. Yes, sir. It is one of constant arguing in the negotiation of a film deal, is the preferred playing time, and especially where you have theatre that has a policy of a Saturday-Sunday-Monday-Tuesday, which are the four big days of the week, and the so-called sevenths of a week on a tenths basis, the distributor is constantly striving for that playing time.

Martin J. Mullin—By Defendant—Direct

Q. Is that so of the distributors who are defendants in this case? A. Yes, sir.

Q. Do they attempt as against each other to get the preferred playing time in your theatres? A. They certainly do, yes, sir.

Q. Is that also true of distributors who are not involved in this case? A. Yes, sir.

Q. How much does M & P spend for advertising annually? A. We spend about \$500,000 a year on the M & P Circuit.

Q. Is a substantial part of that spent in advertising the first-run theatres? A. In our first-run situations, a house like the Metropolitan Theatre, we spend an average of \$2000 on a picture. When the same picture moves into Paramount (1350)

Fenway, which is a carry-over house, you would spend another thousand dollars; and if it was moved into the Modern and Scollay Square, you might have another \$750 or \$1000; and you would have about \$4000 on that particular picture in the downtown first-run situation.

Q. As it moves into later runs, does your advertising on a particular picture tend to decrease? A. That same picture, if it goes into one of our 28-day houses, which is the clearance of downtown first-run against subsequent runs, we may spend as high as \$200 in advertising it.

Q. How about later runs? A. If it gets down to one of the smaller, last runs, it might be \$20, which might be the budget for that particular house.

Q. Why is there that great difference in the amount spent for advertising? A. We feel that the suburban house advertising is more of an informative nature because we feel the amount of money that we spend in downtown Boston has prematurely sold that picture, so when it gets to the 28-day suburban house, your advertising, such as trailers and one

Martin J. Mullin—By Defendant—Direct

inch in the newspaper and in window cards and so forth, is an informative sort of advertising.

Q. That is, the people know all about the picture and you just tell them where it is playing? A. Yes, sir.

Judge Bright: What do you mean by a 28-day house?

The Witness: For instance, the Metropolitan, Boston, (1351)

ton, which is our first-run, by this clearance on the subsequent houses on 28 days, when it becomes available not only to our suburban house but to our opposition suburban houses in certain sections of Boston.

Q. 28 days is the clearance period? A. Yes, sir, 28 days is the clearance period.

Q. Are your license contracts with most of the distributors so-called master contracts? A. We have adopted on our circuit a policy of an individual contract for each individual picture for each individual theatre. We have that in effect at the present time with the exception of Warner Bros., from whom, last year, we bought on the so-called master contract. We used the one contract and deal sheets as we went along.

Q. That is, with other distributors you have an individual contract for each theatre? A. Yes, sir.

Q. You buy your films from all these defendants in this case? A. Yes, sir. We use everybody's pictures, independents' also.

Q. Do you license the pictures of distributors who are not defendants in this case? A. A great many.

Q. What distributors do you license from? A. P.R.C., Republic, Monogram, sometimes smaller independents or State right pictures. Anybody that has a picture we can use, we buy it.

(1352)

Q. Turning to Boston, how many theatres operated on a first-run policy are there there? A. Well, there is the Metro-

Martin J. Mullin—By Defendant—Direct

politan, Paramount-Fenway, Modern and Scollay, M & P operated; the Memorial and Boston, which are operated by RKO; the State and the Orpheum, which are operated by Loew's, Inc.; and there are some independently operated theatres, such as the Majestic, the Tremont, the Old South and the Normandy, that work under a vacillating policy, that is, a policy of both first-runs and subsequent-runs, revival pictures and, in the case of the Normandy Theatre, they have a policy where they use, as they call it, the laugh movie policy, with an occasional first-run going in with that.

Q. Which is the largest first-run theatre in Boston? A. The Metropolitan Theatre is the largest.

Q. How does that compare, aside from size—that is an M & P operated theatre? A. Yes, sir.

Q. How does it compare in general quality and size with the first-run theatres there? A. I think it is generally conceded in Boston that the Metropolitan Theatre is the finest and most expensive operation of theatre in New England.

Q. What product does the Metropolitan play on a first-run policy? A. Licenses Paramount, Warner, two-thirds of Fox, some Republic, some Monogram, and occasionally (1353)

whatever other picture we can buy that is open on the market. Last year we were able to buy three Columbias and one United Artists.

Q. Do you have in Boston some subsequent-run houses in which M & P is interested? A. Yes.

Q. Dealing with Boston generally, do you license the product of as many distributors as you can get in your theatres? A. Yes, sir. I think it is safe to say in our suburban houses we use practically everybody's product regardless of whether we get it downtown or not.

Q. Do you license the product of Republic, Monogram and P. R. C.? A. Yes, sir.

Martin J. Mullin—By Defendant—Direct

Q. What is the basis on which you license the pictures of so many distributors? Why do you have to do that?

A. Well, last year we used 64 pictures at the Metropolitan Theatre. We have in addition to the Metropolitan Theatre the Paramount and Fenway, which many times have open weeks on account of not being able to carry over a picture—a picture does not pay the justifiable business on the carry-over—and we need pictures for those houses. It sometimes becomes necessary to take revival pictures and put them in those houses, with the shortage of product. We had two revival shows in the last eight weeks in the Paramount and Fenway, playing pictures that had been played before.

Judge Bright: Played before in the same theatre?
(1354)

The Witness: In the same theatre and around in other theatres. We bring them back. They had been pictures that had been shown all over before.

Q. Is it the general policy of most of the theatres in New England to play double features? A. New England is acknowledged as a general double feature situation. There are very few single features. There will be exceptions occasionally in situations like downtown Boston, where a picture may be so long that you are unable to put another picture with it, but it is generally a double feature situation.

Q. Do you use Monogram, Republic and P. R. C. pictures in many theatres outside of Boston? A. We use them in a great many situations, Hartford, Worcester; any place we can buy them we use them.

Mr. Seymour: I don't want to hold your Honors beyond the time you want to recess.

Judge Hand: How much more have you?

Mr. Seymour: Quite a good deal. I cannot finish.

Judge Hand: All right. We will adjourn until Monday morning at ten-thirty.

(Adjourned until Monday, October 29, 1945,
at 10:30 a.m.)

Martin J. Mullin—By Defendant—Direct

(1355)

New York, October 29, 1945,
10:30 o'clock a.m.

Trial resumed.

MARTIN J. MULLIN resumed the stand.

Direct Examination Continued by Mr. Seymour:

Q. I had asked you before we adjourned, Mr. Mullin, whether the theatres which you operated licensed the pictures of Republic, Monogram and P. R. C. I think you said they did. A. Yes, sir.

Q. In some situations do you license that product first-run? A. Yes, sir.

Q. And in some situations do you license it subsequent-run? A. Yes, sir.

And do you use it in a number of theatres? A. A number of situations, yes.

Q. You told us on Friday that with the exception of Warner Bros., where you had a master contract, the film license contracts were made individually for each theatre? A. Yes, sir.

Q. And can you tell us why that is? A. Well, we have various corporations, various individual companies, and we prefer the individual contracts in the file of that individual company rather than having him on a master sheet.

(1356)

Q. Is that because in many of the theatre situations there are stockholders who have no connection with Paramount? A. Yes, sir.

Q. Now, do you have any knowledge or information in connection with your film deals with distributors as to what film deals are negotiated or are made by other theatre-oper-

Martin J. Mullin—By Defendant—Direct

ating companies in which Paramount has an interest? A. No, sir.

Q. Do you have any interest in that subject? A. Not interested in any way.

Q. Why not? A. My compensation is derived entirely from the theatres that we operate, and I am interested in no other theatre and what any other theatres can afford to pay for film. We get our results from our own theatres and we are interested only in those theatres in so far as it applies to the individual film deals.

Q. I asked you on Friday whether there were theatres under your operation which were unable to license the product of Loew? A. Yes, sir.

Q. Are there theatres under your operation which are unable to license the product of other distributors? A. In many situations product is sold either to other theatres or operated by circuit theatres, or by individual, independent operators.

(1357)

Q. Is that true with respect to product of Fox? A. Yes, sir.

Q. Are there a number of theatres operated in competition to theatres which you operate which have the Fox product and you are unable to get it? A. Yes, sir; there are situations like Newport and Pawtucket and Woonsocket, Brookline, where the independent buys Fox pictures and we are unable to get them in those situations.

Q. Are there similar situations with respect to the product of Warner Bros.? A. Yes, sir, there are.

Q. And are there a number of those situations where independent competitors are able to get Warner and you are not? A. Yes, sir.

Q. Is that also true as to the product of RKO? A. Yes, sir.

Martin J. Mullin—By Defendant—Direct

Q. And are there a number of independent competitors in various cities who are able to obtain RKO product when you are not?

The Witness: I did not get that.

Mr. Seymour: Would you read that, Mr. Reporter?

(Question read.)

A. Yes, sir.

Q. Is that also true of Universal? A. It is.

Q. Is it also true of United Artists? A. Yes, sir.

Q. Is it also true of Columbia? A. Yes, sir.

Q. Now, are there situations in New England where you (1358)

operate theatres where your theatre or the theatre in which you operate play second-run after an independent theatre?

A. Yes, sir. We have a situation like—we have a second-run theatre in Portland, Maine, that plays product after the first-run theatre, which is independently operated. The first-run independent takes 30 days clearance over our house, which is the same clearance that we take over our own theatre. We have a situation like—Portland—in Quincy, we have two theatres in Quincy, and one in East Milton, both which takes its clearance of 14 days after Quincy, which is independently operated. We have a situation in Brookline where we have two theatres, the Circle Theatre in Brighton, and the Egyptian theatre, Brighton, which obtains its availability after Brookline. The independent theatre in Brookline takes a 7-day clearance over our theatres, which is the same clearance that we take over our own theatres.

(1359)

Q. Are these other examples? A. There are many other situations similar to that.

Q. Is it the fact that where a theatre which you operate plays second-run on a product which is exhibited on first-run in an independent theatre, the independent theatre takes clearance over your second-run theatre? A. Yes, sir.

Martin J. Mullin—By Defendant—Direct

Q. Generally speaking, is that clearance similar or the same as the clearance which your first-run theatre takes on the product which it plays over second-run theatres? A. That is true. Another situation is New Bedford, where we have one suburban theatre, independent has three, and they have downtown first-runs and we have one, they all take the same clearance over the subsequent-run.

Q. Does that apply to the product of all the defendants? A. Yes, sir.

Q. So that wherever you play subsequent-run or second-run following the independent exhibition, all pictures distributed by any defendant to independent first-run take clearance over your second-run? A. Yes, sir.

Q. I want to ask you whether there are situations in which you play second-run on the product of distributors who are not defendants in this case which are played first-run in independent theatres? A. Yes, sir, they take the same clearance. Same clearance as set up, generally, for everybody. If we play a Republic picture in downtown (1360)

Boston, at the Metropolitan Theatre, Republic grants the same clearance of 28 days, the same as the other companies do.

Q. In other words, where a product of a distributor not a defendant in this case is exhibited first-run in an independent theatre, that theatre takes the same clearance over a second-run theatre in which you are interested as on the product of any other distributor, is that right? A. Yes, sir.

Q. Do you find in negotiating film licenses with various distributors that they compete with each other for playing time in your theatres? A. Yes, sir, very substantially.

Q. Can you tell just how that works out and how you observe it in action? A. Well, it comes to the forefront many times on holidays when pictures are available for booking

Martin J. Mullin—By Defendant—Direct

and all the companies that you buy pictures from try to get that holiday date, to get the additional revenue that the holiday brings. That same thing is true in situations where you have a theatre that operates on what we call a long-half policy of Saturday, Sunday, Monday and Tuesday, and then Wednesday, Thursday and Friday, the companies are always trying to get in the long-half time because it means a larger return in revenue.

Q. Do they try collectively to get into that? A. No, sir.

Q. Or is it individual? A. It is always an individual (1361)

problem. I don't think, when the Fox man is trying to get a holiday from me in Boston at the Metropolitan Theatre, that he thinks about anybody else but himself.

Q. When the Fox man is trying to get it, is somebody else also trying to get it? A. Yes, sir.

Q. Does that apply to distributors who are defendants as well as distributors who are not defendants? A. It applies to all of them. Republic is just as bad, as far as playing date time is concerned as some of the other companies.

Q. What do you mean by "just as bad"? A. Well, if Mr. Grainger of Republic has a picture that he thinks is entitled to the Metropolitan Theatre, he is on the phone constantly, trying to get that picture booked into the Metropolitan Theatre.

Q. Do you find the same enthusiastic desire for that preferred playing time among the various defendants. A. Yes, sir.

Q. Speaking generally, are the theatres which are operating under your management on a first-run policy in the various cities of New England, the best or comparable with the best theatres in those localities? A. We think so, yes, sir.

Q. Do you make an effort to keep your theatres up? A. We do.

Martin J. Mullin—By Defendant—Direct

(1362)

Q. When Mr. Goldenson was testifying Mr. Wright asked him about meetings of the operating heads of all companies in which Paramount has an interest. Have you attended such meetings? A. I have.

Q. When there are such meetings; do you go? A. I do.

Q. Can you tell us the general subjects that are discussed at those meetings? A. Yes, sir. We discuss at the so-called partners' meetings the problems that have been confronting our industry in the last four or five years; the matter of types of pictures that we were getting; personalities that were coming to the forefront; the matter of personnel in our theatres during wartime. A circuit like ours, for instance, we have about 350 men in the armed services. We discussed the problems of maintenance with the limited amount of maintenance equipment and supplies that were coming to us. We discussed television, the effect of it upon our business. We discussed unusual advertising campaigns that may arise from time to time. We discussed the proper merchandising of candy in our theatres. And I think that covers, in general, about the things that generally were discussed.

Q. How about war activities, such as bond drives? A. Various war activities, the bond drives, the March of Dimes, the Red Cross, and all the other drives, and the War Activities Committee, the booking of War Activities Films in all (1363)

our theatres, the type and kind of film that was coming to us through the War Activities Committee, the length of it that we could work into our shows. Those were all subjects that were discussed at these various meetings that we had.

Q. At any meeting which you attended did you ever hear any discussion or mention of the negotiations or arrangements made by companies in which Paramount had an interest for the licensing of films of any defendant in this case? A. I did not.

Martin J. Mullin—By Defendant—Direct

Q. Did you ever hear any discussion or mention of the terms upon which, or the arrangements made by which the theatre operating companies in which Paramount has an interest is licensing Paramount film? A. I did not.

Q. Are all those matters, matters which have never been discussed at any meeting which you have attended? A. They are. As I said, Mr. Seymour, we are not interested, insofar as our companies are concerned, in what any other partner of Paramount, or affiliates, pays to film companies for its film. We have in our circuit up there many, many people who are not interested in the film industry, and we therefore buy our film for the individual theatre based on the individual theatre's ability to pay, and I don't think that has any bearing on what a picture might cost in Texas or out in Chicago, and we have worked along on that basis. We (1364)

feel if we did anything else we would be not true to the people that we represent in these various companies.

Q. Does that include the minority stockholders? A. Yes, sir, that does.

Mr. Seymour: You may examine.

Mr. Wright: Are there any other defendants who wish to question? I suppose we might as well have them, if there are.

Are there any other questions?

Mr. Proskauer: I would like to ask one question.

By Mr. Proskauer:

Q. Mr. Mullin, you described that in your area up there in New England that the clearance was not affected by the circumstance that a theatre was affiliated or unaffiliated. From your general knowledge and your other employments that you testified about, is that your observation as a general situation throughout the country?

Martin J. Mullin—By Defendant—Direct

Mr. Wright: That is objected to, if the Court please.

Judge Hand: You may answer.

A. Yes.

By Mr. Caskey:

Q. Mr. Mullin, you operate a first-run theatre in Providence? A. No, sir, we do not.

Q. In New Bedford? A. Yes, sir.

Q. Do you get Fox product there? A. We do not. The

(1365) independent opposition gets it.

Q. Do you play it second-run? A. Yes.

Judge Goddard: New Bedford?

The Witness: New Bedford, Massachusetts.

Q. I want to ask two questions about geography. How far is it from the Metropolitan Theatre in Boston to the Central Square Theatre in Cambridge? A. Oh, I would say it is from three to four miles.

Q. You operate two theatres first-run in Somerville? A. Yes, sir.

Q. Which of those is closer to Cambridge? A. Somerville is adjacent to Cambridge. You just go from one street to another in Cambridge and you are in Somerville. Somerville theatres get their clearance seven days after first-run Cambridge.

Q. Which theatre is closest to the Central Square? A. Which theatre? You mean of the Somerville theatres?

Q. Yes. A. I would say the Ball Square is the closest.

Q. How far is that? A. Less than two miles.

Q. The theatres in Somerville compete for part of the same patronage that the Metropolitan competes? A. Yes, sir.

Mr. Leisure: I have no questions.

*Martin J. Mullin—By Defendant—Cross**Cross Examination by Mr. Wright:*

Q. Mr. Mullin, in your testimony about runs and clearance, you did not mean to suggest that there were no situations (1366)

in which there were differences between the clearance that your theatres got and that independents got, is that right? A. I think, Mr. Wright, that the clearance is pretty generally set up on all getting the same availability. There are some differences. For instance, Lynn; the theatres in Lynn get the availability 21 days after Boston on all product except Metro, who gives us 28 days, but I think generally that in New England, around Boston, where our clearance was set up, that the clearance is pretty much the same for everybody.

Q. Let me call your attention to Middleboro, Massachusetts. Are you familiar with that situation? A. I understand that was in the arbitration.

Q. Do you remember that the question of clearance was arbitrated there, that is, Middleboro was being subjected to clearance 28 days after Boston, and had an arbitration proceeding, and then got a cut to 14 days as a result of an award? A. I think Middleboro's clearance was set up on Brockton and Taunton, and the objection of the man in Middleboro, Mr. Hudson, was that he was getting his clearance from two points and he only wanted his clearance from one point, which he was entitled to.

Q. In any event, after the award he got 14 days after Boston on all distributors except Paramount, isn't that right? A. I don't know just—I cannot remember just what (1367)

the arbitration case was set up as.

Q. You remember that Paramount was excused because of its interest in the M & P theatres? A. Having a theatre in downtown Boston, I imagine so.

Martin J. Mullin—By Defendant—Cross

Q. And then after the award was made, although he plays all the other major product 14 days after Boston, he continues to get Paramount 28 days after Boston? A. I think that is probably so. That would be a similar case to the Lynn, where Loew had a theatre in Boston and got 28 days instead of 21.

Q. Do you recall that the same thing occurred, or there was a similar situation in Ayer, Massachusetts, where the independent there brought an arbitration proceeding, he gets his pictures seven days after Lowell from everybody except Paramount? A. I think that was an account of Paramount having theatres in Lowell.

Q. Yes, and then Paramount continues to serve him fourteen days after Lowell? A. I don't remember exactly what the judgment was but that was another case where Ayer was getting its clearance from two points, from Fitchburg and Lowell.

Q. I am not asking you, I am directing to not what the judgment was but to the fact that Paramount continued to serve him 14 days after Lowell while the other major distributors served him seven days, in accordance with the (1368) award? A. I am not familiar with that.

Q. Mr. Mullin, what standards have you used in determining whether or not you are paying too much film rental in any particular situation? A. Where you have standards of periods of years of operation in that individual theatre, and if you are not making any money in the theatre, you know there is something wrong. It may not be film rental, it may be something else, but I think your experience in the business, and the deals that have been built up over a period of years, give you a pretty good yardstick as to what you should pay or should not pay.

Q. You don't think what comparable theatres pay would have anything to do with it? A. No, sir. I don't think so in any way, shape or form.

Martin J. Mullin—By Defendant—Redirect

Mr. Wright: That is all.

Redirect Examination by Mr. Seymour:

Q. In these cases that Mr. Wright asked you about, where theatres in which Paramount had an interest were involved, the award did not run in connection with those theatres because of the provisions of Section 8 and Section 17 of the Consent Decree, isn't that so? A. I would imagine so, yes. (1369)

Judge Goddard: Mr. Seymour, just what did you mean by that question?

Mr. Seymour: Section 17 stems from the Arbitration Award under Section 8, the exhibition of Paramount or any other defendant's product in theatres in which that defendant has an interest; and I wanted to make it clear that there was such an exemption in these particular cases about which Mr. Wright inquired, which was a result of the terms of the decree which the Government participated in.

Judge Goddard: Article 17?

Mr. Seymour: Section 8 and Section 17. Of course, that is only the product of the particular company. If, for example, that theatre in which Paramount had an interest was playing the product of another distributor, who was a party to the decree, that product would be subject to the consequences of the award but not by express exemption consented to by the Government, but not Paramount product in theatres in which Paramount had an interest.

Judge Bright: I do not see that in Section 17, as you call it. What is the clause you refer to?

Mr. Seymour: I will call your Honor's attention to it.

Mr. Wright: If the Court please, there is no question about the exemption and the fact that Para-

John J. Friedl—By Defendant—Direct

(1370)

mount was not subject to the awards and was excused because it played the exemption. I thought I brought that out on the examination. I did not mean to suggest otherwise. I simply wanted to point out that although the clearance of the other distributors was cut by the award, Paramount continued to have longer clearance.

Mr. Seymour: Is that sufficient for your Honor's purpose, Judge Bright?

Judge Bright: Yes.

Mr. Seymour: Has your Honor before you Appendix C to the Government's brief?

Judge Bright: Yes.

Mr. Seymour: Mr. Caskey says that that provision is on page 12.

Now, my colleagues say that my description of the consequences of those provisions was unhappy; that rather than being exempted from the award the decree expressly provides that the clearance of such pictures are not arbitrable, which is perhaps the same thing in another form.

All right, Mr. Mullin. No further questions.

(Witness excused.)

(1371)

JOHN J. FRIEDL, called as a witness on behalf of the defendant Paramount, being duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Friedl, are you president of Minnesota Amusement Company? A. I am.

John J. Friedl—By Defendant—Direct

Q. And are you also its general manager? A. Yes, sir.

Q. Where are your headquarters? A. In Minneapolis.

Q. Now, will you give us a brief outline of your experience in the motion picture industry? A. I entered the motion picture industry in the year 1916 and served in various capacities, as operator, doorman and assistant manager at various theatres until 1923, when I went to Dallas, Texas, and became manager of the Palace Theatre.

I served in that capacity for a year and a half, and then was appointed district manager of the theatres in Texas operated by Publix Theatres.

In 1929 I was transferred to New York and given supervision over the DeLuxe Theatres operated by Publix in the northeast. These included New Haven, Boston, Rochester, Buffalo and Toledo.

After about six or eight months in that position, I moved into New York and took over the supervision of the theatres operated by Publix Theatres in the southeast. Those were (1372)

the theatres located in the States of Georgia, and Alabama, North and South Carolina, Tennessee and Florida.

In 1931 I returned to Dallas as division manager for the DeLuxe Theatres operated by Publix in the southwest; and in April 1932 I was transferred to Minneapolis as division manager of the Publix Northwest Theatres. These were operated by me under the supervision of Publix Theatres in New York.

On January 28, 1933, the Minnesota Amusement Company went into receivership, and at that point the entire authority for operating the theatres was transferred to Minneapolis, and I continued in charge of the theatres from that date through the receivership and up until the present time.

Q. That is the decentralized program which has been testified to went into effect with respect to the Minnesota

John J. Friedl—By Defendant—Direct

-Theatres some time in early 1933, is that right? A. That is correct, yes.

Q. And since that time you have been in charge of the operation of those theatres, is that right? A. Yes, sir.

Q. Now, during the receivership what part did you play in their operation? A. I operated theatres for the receiver.

Q. Was that a Federal Court receivership? A. It was a Federal Court receivership, and ancillary receivers were (1373)

appointed in Wisconsin, North and South Dakota.

Q. And the receivers were under the jurisdiction of the District Court of Minnesota? A. Yes, sir. The Federal Court of Minnesota.

Q. Yes. Now, when did the receivership terminate? A. The receivership terminated in July 1935.

Q. In the course of that receivership did Minnesota Theatres lose some of its theatres? A. Yes, it lost a considerable number of theatres.

Q. And were there some cities where it had theatres where it lost all the theatres? A. Yes, sir.

Q. What is Paramount's interest in Minnesota Amusement Company? A. Paramount owns all the stock of the Minnesota Amusement Company.

Q. And how many theatres are operated today by Minnesota Amusement Company? A. At the present time Minnesota Amusement Company is operating 94 theatres. Of that number six of them are closed and seven are operated by partners. So actually Minnesota is operating 81 theatres.

Q. Now, when you say operated by partners, do you mean that Minnesota has an interest in some theatres along with some outside stockholders? A. In several cases Minnesota owns a half interest in the operation in certain towns, and in those particular towns the partner handles the operation. (1374)

Q. And is the so-called partner there an independent stockholder having no connection either with Minnesota or

John J. Friedl—By Defendant—Direct

with Paramount or any other distributor? A. None other than the partnership we have in that particular town.

Q. Now, how does the number of theatres in which Minnesota Amusement Company is now interested compare with the number in which it was interested at the time of the receivership? Is it smaller? A. At the time of the receivership, which was in January 1933, Minnesota operated in about five towns which they are not operating in at the present time. I think there would probably be 23 or possibly 25 less theatres today than there were when the company went into receivership.

Q. Now, do you know when Paramount acquired its interest in Minnesota Theatres? A. Paramount bought the theatres operated by Finkelstein & Ruben in 1929.

Q. And prior to that time that group of theatres had been independently operated by Finkelstein & Ruben, is that right. A. Yes, sir.

Q. Speaking generally, was the number and location of theatres in 1929 at the time Paramount acquired its interest in Finkelstein & Ruben about the same as it was in 1933 at the time Minnesota went into receivership? A. No. I believe that Finkelstein & Ruben in 1929 were operating in a few more towns, and I believe they had a few more theatres than (1375)

Minnesota had in 1933.

Q. But certainly Finkelstein & Ruben had at least as many, if not more? A. Yes, I believe there were more because at the present time there are substantially less towns and less theatres than there were in 1929 when Paramount took the interest.

Q. Now, are you employed by Minnesota Amusement Company under a contract which gives you an interest in the successful operation of that company? A. Yes, sir.

Mr. Wright: If the Court please, we would again like to have the contract.

Mr. Seymour: Just as in the case of Mr. Mullin, I shall be glad to make it available to you.

John J. Friedl—By Defendant—Direct

Q. And your compensation therefore depends at least in part and whether or not that company is operated successfully, is that right? A. Yes, sir.

Q. Now, is there an operating agreement between Minnesota Amusement Company and RKO with respect to a theatre in Minneapolis and St. Paul? A. There is.

Q. And how many theatres in which RKO is interested are involved in that operating arrangement? There is one RKO theatre in each town.

Q. Did you have anything to do with the making of the operating arrangement originally? A. Yes.

Q. And when was it made? A. It was made in St. Paul (1376)

in May of 1936 and in Minneapolis in December of 1936.

Q. And in one case that was within less than a year of Minnesota's coming out of receivership, and in the other case just slightly over a year, is that right? A. Yes, sir.

Q. What was the economic condition of the motion picture theatre business in the Twin Cities at the time those agreements were made?

Mr. Wright: If the Court please, I do not see that that has the slightest relevance, what the economic condition was when those agreements were made.

Mr. Seymour: I think it is perfectly plain. I am going to establish that this operating arrangement was made because of the terrible economic conditions affecting motion picture theatres at that time; and the Government makes some undisclosed claim as to these arrangements, and I propose to establish that they are quite reasonable.

Mr. Wright: The agreement is still in effect today. What possible justification could there be in—

Judge Hand: Overruled.

Mr. Seymour: Mr. Reporter, will you read the pending question.

(Question read.)

John J. Friedl—By Defendant—Direct

A. We emerged from receivership in July 1935, and following that the conditions, particularly in the Twin Cities, (1377)

were very, very bad. In both St. Paul and Minneapolis during the period 1935, the theatres, our theatres in those situations lost over \$100,000 apiece. The condition continued to get worse, and it appeared that having emerged from receivership we were heading right back into it again, and possibly into bankruptcy and disintegration, and something had to be done. And it occurred to me that possibly some kind of an operating agreement might be developed with the Orpheum Theatres in the two towns which would enable us to meet this problem. The problem was aggravated because of the intense desire of each of us to correct the situation, we resorted to what might be called even hysterical efforts. In the instance of Minneapolis the Orpheum inaugurated stage shows. We, on the other hand, did the same thing. And here were two large theatres battling day in and day out with stage entertainment and losing substantial amounts of money. And as we continued it occurred to me and to the RKO people also that if this thing could be put on a sane basis, possibly we could solve the problem.

So an operating agreement was developed, and it anticipated these things, that first the terrific cost of these stage shows in two theatres week in and week out could be eliminated, (1378)

and in place of that the quality of the stage entertainment could be improved, because under the new arrangement only occasional shows were booked, and those were shows with big and important names instead of the usual vaudeville type of show that had been running in the two theatres.

It also brought about a flexibility in booking so that the pictures could be booked in the proper theatres.

Then, in addition, it brought about a tremendous cut in expense. Unheard of sums had been spent for advertising by

John J. Friedl—By Defendant—Direct

both the Orpheum and our theatre, and under the new arrangement that advertising was tremendously reduced, particularly with respect to the newspapers and radio, and also possibly outdoor billing. And all in all it was the one and only solution that kept us in business in the Twin Cities during that very bad period.

(1379)

Q. Now, did those observations that you made apply generally to the operating arrangements both with respect to the Orpheum in Minneapolis and also with respect to the Orpheum in St. Paul? A. Yes.

Q. And as a result of the arrangements have the theatres subject to the arrangements been operated profitably whereas they formerly were operated at a loss? A. It brought about an immediate improvement.

Q. Now, as a result of the operating agreement, was there an increase in admission prices? A. No.

Judge Bright: What was this operating agreement?

I do not know anything about its terms other than what he has just explained here.

Q. Would you explain somewhat more fully, Mr. Friedl, the nature of the arrangement?

Mr. Wright: I think it is in evidence, if the Court please.

Judge Bright: Yes, but there are 300 exhibits in evidence and we do not even know what is in them except as you have detailed them in the brief.

Mr. Seymour: The agreement is in evidence, and I was just inquiring generally as to the background.

Judge Bright: I should like to know something about the general features of it.

Judge Goddard: I would be interested too in know-

(1380)

ing what that agreement provided for.

Colloquy

Judge Bright: We have got a blind plaintiff's case here, with 300 exhibits that we have not had a chance to look at and have not been told what is in them. Tell us something about this agreement, will you?

The Witness: This agreement was made between the Minnesota Amusement Company and the RKO Theatres in St. Paul, and between the Minnesota Amusement Company and the Singer Minneapolis Corporation in Minneapolis.

Judge Hand: What is the Singer? Is that part of RKO?

The Witness: The Singer was a company in which an individual named Mort Singer owned a certain amount of stock, and the rest was owned by the RKO people.

Under the condition prior to the development of the agreement, the RKO Theatres had the product of RKO pictures, one-half of Warner First National pictures, all of Columbia, and a selection of Universal. We had the product of MGM, Paramount, Fox and half of Warner First National. We also had United Artists. And under that condition pictures played as they were purchased. The pictures under contract to RKO would all play the Orpheum, and the pictures under contract to us would all play our theatres. It was a difficult manner of booking, because with commitments to as many as three major producers, the

(1381)

Orpheum would find many pictures playing in the theatre which really did not belong there, and we had such a condition but it was not quite as aggravated.

And so, under this arrangement the pictures were booked in the theatres operated by both the Orpheum and our company; and also the supervision of the theatres, the operating policies, were considered from the standpoint of the theatres as a group, and as a result of that expenses were reduced.

John J. Friedl—By Defendant—Direct

Q. And who actually supervised the management of the Orpheum and the other theatres? A. The Orpheum retained its identity as a Singer operation in Minneapolis and as an RKO operation in St. Paul, but they did it in concert or in cooperation with our office and our district manager.

Judge Bright: Was there any pooling of the receipts or expenses?

The Witness: The arrangement was this: First, that all of the expenses would be paid for all of the theatres with the exception of rent and fixed charges. Over and above that the amount left was split, in Minneapolis, 28 per cent to the Orpheum, 72 per cent to Minnesota Amusement Company; and in St. Paul it was split 30 per cent to RKO and 70 per cent to Minnesota Amusement Company.

Q. How were these percentages determined? A. Sir? (1382)

Q. How were these percentages arrived at? A. Those percentages were arrived at by a calculation of figures which preceded the development of this operating agreement, which showed the return to each theatre over a period of time. I did not work out the figures, but that was the principle used.

Judge Bright: Now, did both of those circuits or those two companies own the theatres in both cities?

The Witness: Well, not all of them. In Minneapolis there is an independent operation, the Pantages. There is another one, the World Theatre; and in St. Paul there was the World, the Lyceum and the Garrick.

Q. Now, are there a number of independently-operated subsequent-run theatres in both cities? A. Yes, sir.

Q. Now, following the making of the operating agreement, and a result of that agreement, were the admission

John J. Friedl—By Defendant—Direct

prices in the Orpheum and other cities raised? A. They were not at that time, but they have been raised at one or two periods since then.

Judge Goddard: Mr. Seymour, would you tell me the exhibit number that this has reference to?

Mr. Seymour: Nos. 205 and 206.

By Mr. Seymour:

Q. There have been certain increases in admission prices some time after those agreements were made? A. Yes; and (1383)

they were based on business conditions generally throughout the country. It occurred about the same time everywhere that theatre admission prices increased.

Q. Now, as a result of that agreement did the theatres involved play less pictures than before? A. No, they played approximately the same number of pictures.

Mr. Wright: If the Court please, I object to the form of this—"as a result of that agreement." He can say what happened, but I suppose the Court is just as competent as he is to judge.

Judge Hand: Yes. That may be stricken out.

Q. Following the agreement did the theatres play less pictures than before? A. No, I believe not.

Q. They played about the same number? A. About the same number.

Q. And since that time has the quality of the stage shows which are exhibited been improved? A. Considerably.

Q. Now, following that agreement has there been any change in the playing position of exhibitors? A. No, sir.

Q. Now, leaving the subject, where are the negotiations for licensing of films in the theatres operated by Minnesota Amusement Company, conducted? A. Generally in my office in Minneapolis.

John J. Friedl—By Defendant—Direct

Q. And do you either participate or supervise those negotiations? A. I conduct most of the negotiations.
(1384)

Q. And do you finally approve any film license agreement? A. Yes, sir.

Q. And do you operate under master agreements from most of the distributors or under individual agreements? A. Well, both. We have master agreements with a number of companies.

Q. And you also have individual agreements for particular theatres? A. Yes.

Q. And do you license the pictures of all distributors? A. Yes, sir.

Q. Does that include distributors who are not defendants in this case? A. Yes.

Q. Now, at the time you negotiate with representatives of the defendants in this case who have an interest in theatres, do you have any knowledge or information as to negotiations or film deals which those distributors are arranging or have arranged with theatres in other companies in which Paramount has an interest? A. No, sir.

Q. Do you have any knowledge or information as to negotiations or arrangements made for the licensing of Paramount pictures in the theatres in which those defendants have an interest? A. No, sir.

Q. Do you have any knowledge or information as to the negotiations or arrangements of distributors not interested
(1385)

in theatres as to what negotiations or arrangements they may have with other companies in which Paramount has an interest? A. I do not.

Q. Is there any relationship whatever between your negotiations with the representatives of distributors and any negotiations or arrangements which may be made by Paramount or the other distributors with respect to other theatres? A. No.

John J. Friedl—By Defendant—Direct

Q. Does the Paramount Theatre Department supply you with any information as to the negotiations on license agreements of other theatre companies in which Paramount has an interest? A. They do not.

Q. Does the distribution department of Paramount furnish you with any information as to negotiations or arrangements which it is conducting or has made with theatres in which other distributors have an interest? A. No, sir.

Judge Bright: Do you know whether Paramount licenses independent theatres in the same circuits where you operate?

The Witness: Yes, they do.

Q. Does the Paramount Theatre Department aid or assist you in connection with your negotiations with any other distributor? A. No, sir.
(1386)

Q. Do you send to the theatre department extracts or abstracts of your film contracts with other distributors? A. No, I do not. I send to Paramount a weekly report of the weekly result.

Q. Of the operation of the theatres? A. Yes, sir.

Q. That is the report which Mr. Goldenson, referred to when he was here, is it not? A. I believe so, yes.

Q. Does any official or employee of Paramount give you any instructions at all with respect to the film deals which you are to negotiate with other distributors? A. No.

Q. Does Paramount tell you who you shall deal with or who you shall not deal with, or as to what terms on which you should deal? A. Never.

Q. Does RKO interfere or give you any instructions with respect to the distributors whom you are to deal with or the terms upon which you are to deal? A. No, sir.

Q. Do you get from the Paramount theatre department reports as to the grosses on certain pictures in key theatres in which Paramount has an interest? A. Yes, I do.

John J. Friedl—By Defendant—Direct

Q. Do you also get from time to time reports as to public reaction to certain pictures? A. Yes, I get that from New York.

Q. Those are the reports which Mr. Goldenson referred to? A. Yes, sir.

Q. Is similar information, not in the same form, but (1387)

somewhat similar information, available in the trade press?

A. Yes, it is.

Q. What importance, or value to you, is that information?

A. Well, it enables us, first, to determine at least in some measure whether the pictures are worth what the distributor is asking for them and also enables us to book them with greater intelligence than we could did we not have such information. It gives us the reaction to certain pictures that play in the large metropolitan centers early, and on the basis of that we can buy and book with greater effectiveness.

Q. Is the film negotiation, that is, the negotiation of the film license contract with the distributor, a simple or a complicated matter? A. It is a complicated, very complicated matter.

Q. Will you tell us some of the complications that may arise? A. Well, I believe you start at the point where the distributor makes every conceivable effort to get the maximum amount of money and the best possible playing time and the greatest amount of advertising for his picture. On the other hand, I believe that the exhibitor wants to buy the pictures as economically as he possibly can. And the conflict between the two is usually a very tedious proceeding and it is very tiresome and it sometimes takes quite a long time to settle.

(1388)

Q. Does it sometimes take weeks to work out a deal? A. There have been occasions where it has taken three or four weeks and sometimes longer.

John J. Friedl—By Defendant—Direct

Q. Is there any difference between the relative heat and intensity of the negotiations with distributors who have an interest in theatres and those who do not have an interest in theatres? **A.** No, they are all tough and they are all very difficult.

Q. Are all the distributors trying to get the best playing time for their pictures they can in the theatres you manage? **A.** Each and every one of them, yes.

Judge Bright: What effect has that desire on the negotiations between you and the distributor?

The Witness: Well, we sometimes don't always agree with the distributor on the terms he is asking for his pictures or the time he is asking for it.

Judge Bright: Why not?

The Witness: Because he may take the position that a certain picture is entitled to preferred or extended playing time, which means that it shall play in the better theatres over a Saturday and a Sunday and we may feel that it should play at the last half of the week, and that causes considerable discussion and argument.

Judge Bright: In other words, you have a dispute with him about the merits of the picture?

(1389)

The Witness: That is correct.

Q: Does that affect the terms which he will ask you to pay and which you are willing to pay, as well as playing time? **A.** It is very definitely a matter of terms, I believe, in all negotiations. It is my observation that the distributor expects to get the maximum amount for all of his pictures, and it is quite necessary for the theatre operator to combat that, if he intends to stay in business.

Q. Is the final negotiation ordinarily a result of compromise of those respective views? **A.** Yes, I believe so.

John J. Friedl—By Defendant—Direct

Q. Do you license the pictures of Loew, Fox, Warner and RKO for all your theatres? A. Yes, sir.

Q. That is, you have them in all the theatres? A. We have them in all of the towns. The pictures that we buy, some of them play in the A Theatre, so-called, the large theatre in town; some of them play in the second theatre.

Q. But there are theatres in which you are unable to license the product of some of those distributors, is that correct? A. That is correct.

Q. And in those theatres would you like to license the product of some of those distributors? A. Yes, in several instances I should.

Q. In those instances does the product go to your competitors? A. Yes, sir.

(1390)

Q. Are your competitors in some of these localities independent theatre operators? A. Yes, sir.

Q. Do you operate some first-run theatres and also some subsequent-run theatres? A. Yes.

Q. Who determines the admission prices which you charge in your theatres? A. Well, I believe I do.

Q. There is a provision in the license contract that you have with all distributors as to a minimum admission price? A. That is correct.

Q. Is that the price which the distributor tells you you must charge? A. No, it is—the price that is entered into the contract is in there as a matter of precedent. The prices have been generally established over a period of years. From time to time they have been increased and as that has taken place, all of the distributors have been notified, and the prices that are listed in the contracts are the established price of the theatre, and when those prices are changed, why, the distributors are notified.

Q. And the prices are established by you and your company and changed by you and your company? A. Yes.

John J. Friedl—By Defendant—Direct

Q. Are there occasional instances of special attractions where there is a negotiation as to a higher admission price with the distributor? A. That has come up on several occasions. In the case of the picture "Woodrow Wilson," and (1391)

several other pictures, they have been released by the distributors as road show attractions, and in those cases the distributors insisted upon road show prices, and it was the option of the purchaser, or the theatre, to buy or not to buy those pictures at those prices; but if he expected to play the picture at that time, he would have to charge such admission price.

Q. And if he was not willing to advance his admission price to meet the distributor's terms, he had the opportunity to play this picture on regular run, is that right? A. At a later date, that is correct.

Q. Is the provision for that minimum admission price included not only in license contracts for first-run exhibition but also for subsequent-run exhibitions? A. Yes, I think it applies in all cases.

Q. Is it included in license contracts for percentage pictures and also for flat rental pictures? A. Yes, sir.

Q. Where the admission price is included for subsequent-run exhibition, does your answer with respect to who determines the admission price apply to that as well? A. That is correct. But, of course, it is reasonable to assume, to understand, that in setting our admission prices, we do not do that on an arbitrary basis because it is reasonable to expect that the larger theatres playing the first-runs would get the maximum price for the protection of the distributor and the (1392)

producer. And in the secondary houses the prices are less.

Q. That is, generally speaking, the first-run houses charge a higher price than subsequent-run, and then the prices step down among the runs? A. That is correct.

John J. Friedl—By Defendant—Direct

Q. And do some of the admission prices in your localities, where you are operating theatres, go down to as low as fifteen cents? A. Yes.

Q. Does it ever occur that theatres with a minimum admission price in their contracts, actually charge a somewhat higher price? A. That frequently happens, yes.

Q. Do your license agreements with distributors contain provisions for clearance? A. They do.

Q. Is that true both of first-run and also the subsequent-run showings? A. It applies almost entirely to first-run, and particularly to the A theatre operation.

Q. Is there any reference in the clearance provisions in your agreements to the admission price to be charged by the theatre over which your theatre takes clearance? A. Well, we believe—

Mr. Wright: Obviously, the agreements speak for themselves.

Judge Hand: Overruled.

A. We believe that price is one factor in clearance but it is not entirely the determining factor. There are other con- (1393)

siderations that must be considered. For example, there must be considered the size of the theatre, the operating cost of the theatre, the capacity, the location and the ability of that theatre to deliver the maximum amount of return to the distributor and producer.

Q. I did not make myself clear to you. Your answer applies to the theatre which gets clearance? A. That is right.

Q. What I am asking you is whether there is any reference in your clearance provisions of your license contracts with distributors as to the admission price to be charged by the theatre over which the theatre licensed has clearance. A. I am afraid I don't understand.

John J. Friedl—By Defendant—Direct

Q. In other words, where a first-run theatre has a clearance over a second-run theatre, do your clearance provisions of your license contracts contain a reference as to the admission price to be charged by the second-run theatre? A. No, sir, definitely not.

Q. Is the admission price to be charged by the second-run theatre a part of any understanding or agreement with the distributors? A. Between him and the distributor or—

Mr. Wright: If the Court please, that is a pure conclusion and argument. The clearance on the first-run theatre is in evidence in the form of answers to interrogatories, asking to have it set forth. I submit the argument as to the significance of those can be
(1394)

made by counsel.

Mr. Seymour: I am not asking for the significance. I am asking the question of fact. My first question is as to whether there is any reference to it in the agreement, and, second, is it a part of any understanding or agreement, if it is not in the agreement. Those are questions of fact.

Judge Hand: Overruled.

Q. Let me be sure I make my question clear to you: Is it a part of any understanding or agreement between your company and the distributor which is licensing your theatres first-run, as to what the second-run is to charge by way of admission price? A. No.

Q. Mr. Phillips say that that question should be expanded. Where you license second-run, is there any agreement or understanding as to the admission price to be charged by the subsequent-run exhibitor? A. There are no such references in the contracts at any point.

Q. Is there any such reference in any understanding or agreement that is not embodied in the contract? A. No, sir.

John J. Friedl—By Defendant—Direct

Q. Is the clearance that you get from various distributors generally the same for the particular theatre that you are licensing for? A. Generally, yes.

Q. Do you negotiate clearance every time you negotiate (1395)

a license contract? A. That is correct.

Q. Is there an actual negotiation or does the clearance remain the same? A. Since clearance generally remains the same, then in such cases the usual clearance applies, but clearance is definitely a part of the negotiation at one point or another.

Q. Do you license the pictures of distributors who are not defendants in this case, like Republic, Monogram and P. R. C.? A. Yes.

Q. Do the clearances granted by those companies to the theatres in which you license amount to about the same or are they the same clearances as those granted by other distributors? A. Same clearance.

Q. Do you have situations among the theatres which you operate where independent operators play on an earlier run, pictures which you license on a run subsequent to theirs?

A. Yes, that is true in the Twin Cities, where we have subsequent-run theatres and the independents and other circuit operators have subsequent run theatres, some of our theatres play ahead of the others, and some of the others play ahead of ours.

Q. Are there situations where an independent exhibitor plays product first-run which you play on subsequent-run, as in Duluth, for example? A. No, I don't believe so. There is a situation in Superior, Wisconsin, where a subsequent-run (1396)

theatre plays ahead of—a subsequent-run independent theatre plays ahead of a subsequent-run downtown theatre operated by us.

Q. Where you play after an independent exhibitor, on whatever run you do play on, does the independent theatre take clearance over your theatre? A. Yes.

John J. Friedl—By Defendant—Direct.

Q. Can you give us an example of that? How about St. Louis Park in Minneapolis? A. Well, the Minneapolis clearance is set on the basis of the picture playing in the Uptown Theatre 28 days after the close of its engagement in the original downtown theatre. I mean by that, that if a picture goes into Radio City and plays two weeks, 28 days after that two weeks it goes into the Uptown, even though it may be moved from Radio City to another theatre. Then the Uptown holds clearance of 14 days over St. Louis Park; St. Louis Park in turn holds clearance of a certain number of days over subsequent theatres which follow it; and so it moves on down the line, certain theatres have clearance over others, ours as well as the independents.

Q. In that situation there are some independents that hold clearance over your theatres? A. Yes.

Q. And there are also situations in which you take clearance over independent theatres? A. That is correct.

Q. Does the length of the clearance depend upon whether (1397)

the theatre having clearance is an independent theatre or one of your theatres? A. No, it has nothing whatever to do with whether it is a circuit theatre or an independent theatre.

Q. It is a question of the area, really, rather than—
A. Question of area, and the different factors that enter into it, and the ability of distributors to provide prints, because that is sometimes a very difficult problem where an area as large as Twin Cities-subsequent-run area, is.

Judge Goddard: You say that there are independent theatres who have clearance prior to yours?

The Witness: Yes.

Judge Goddard: Is St. Louis one of them?

The Witness: St. Louis Park theatre. That is an independent operation.

John J. Friedl—By Defendant—Direct

Judge Goddard: Do you recall any other theatre, independent theatres, that have prior clearance to yours?

The Witness: Well, as the pictures play in the various clearance practice, the theatres like the Avalon, the Boulevard, the Nile, I believe, play ahead of our Nokomis Theatre and our Loring Theatre. Without consulting the record I can't tell you exactly how those things fit in, but the situation is that certain independent theatres play ahead of our theatres, and our theatres in many cases play ahead of the independents. In the case of the Uptown, which is first

(1398)

suburban run in Minneapolis, that plays first, and that has clearance over St. Louis Park, an independent operation, and that in turn has clearance over the others, both independent and ours.

Judge Bright: Those are subsequent-run theatres?

The Witness: Yes.

Judge Goddard: But you did refer to some first-run theatres, independent, which had prior clearance, did you not?

The Witness: No, I don't believe so.

(1399)

Q. There are several cities, like Duluth, where there is an independent first-run theatre? A. That is correct.

Q. Do you have subsequent-run theatres there? A. Yes, we have one subsequent-run house. I see; I understand what you mean. In those cases, yes, that is so, they have clearance over the theatres where we run subsequent-run.

Q. Let us see about that and make it clear. In Duluth there is a first-run independently-operated theatre? A. That is correct.

John J. Friedl—By Defendant—Direct

Q. And what is the product that that theatre plays first-run? A. That theatre plays the product of RKO and Columbia first-run.

Q. Do you play those products or some of them subsequent-run in Duluth? A. That is correct. We play them in the Strand Theatre.

Q. Does the theatre, that independent theatre which plays them first-run, take clearance over your Strand? A. Yes, sir.

Q. Do you in your first-run theatre, on the product played second-run, take a similar clearance over whatever second-run theatres there are? A. Yes, sir.

Q. Does that happen elsewhere? A. Yes, that condition exists in Superior, Wisconsin. It exists also in Sioux Falls, South Dakota.

(1399a)

Q. In Sioux Falls, South Dakota, is there an independent operator playing RKO product? A. There is an independent operator playing RKO product, Columbia product and Universal product, first-run.

Q. Do you play some of that product second-run? A. We play it in all theatres, Sioux Falls, second-run, and this house has clearance over us.

Q. Does your first-run house, on that product it plays, take the same clearance over the second-run which plays that product? A. Precisely same clearance.

Q. So, generally speaking, whether it is first-run, second-run or later run, independents take the same clearance over the later runs as theatres affiliated with Minnesota Amusement Company, is that right? A. That is correct.

Q. There is no difference in clearance based upon the fact of affiliation? A. That is right, no difference at all.

Q. From your general experience in the business, elsewhere in the United States, is that also true? A. Yes, sir.

John J. Friedl—By Defendant—Direct

Q. Does your company spend a substantial amount on advertising? A. We spend approximately \$400,000 a year on advertising.

Q. Generally speaking, does the amount spent for advertising first-run prove to be more substantial than the amount spent on later runs? A. The majority of the money spent (1400)

is confined to the first-run engagements, not only in the Twin Cities, but in the out-of-town situations.

Q. Why is it that so much more is spent on first-run? A. Well, the first-run engagement is, of course, in the theatre—is presented in the theatre that is the most expensive to operate. It pays the highest possible film rental and reaches the greatest number of people. Therefore, the selling is geared to the first-run on the theory that after it has been sold to the public for the first-run, it is then presold for all subsequent-runs, and it requires nothing more than an announcement in the subsequent-runs to refresh the minds of the public that this picture is coming back.

Q. Where your company has first-run theatres, would you say generally that they are the best or comparable to the best theatres in those localities? A. In all of our situations our theatres are not only the largest in practically every city but they are by far the best theatres. They are well operated. They are operated in accordance with all the local laws and regulations and the regulations of the State. They are air conditioned, and we make it a very definite policy to keep our theatres, to use the phrase that we use, as clean as a battleship, and that is true up and down the line in the theatres that we operate.

(1401)

Q. Do you make constant improvements in your theatres? A. We make as many improvements as are necessary. We try to carry out a policy of improvements that at all times is in

John J. Friedl—By Defendant—Cross

the interest of the public, not only from the standpoint of comfort, but from the standpoint of safety.

Q. In Minnesota and Wisconsin and North Dakota, are there a number of circuits or theatres which are independently operated? A. There are quite few independent circuits. The Bennie Berger Circuit, I believe they operate, I would say, from 12 to 15 theatres; the Franklin Amusement Company, I should say, operates 16 or 18 theatres; Welworth Amusement Company, I believe they operate 15 or 16; the Baehr Circuit is an important operation—I imagine they have probably 18 theatres in probably 8 or 9 towns. They are fine properties.

Q. Do the theatres of some of those circuits operate in some of the localities where your company has theatres? A. Well, that is true. In the case of Sioux Falls, South Dakota, Welworth operates the opposition theatre.

Mr. Seymour: Any questions from the defendants?

Cross-Examination by Mr. Caskey:

Q. Mr. Friedl, you license the Twentieth Century-Fox product first-run in Minneapolis and St. Paul? A. Yes, sir.

Q. And Duluth? A. Yes, sir.

Q. With whom do you negotiate? A. I negotiate with (1402)

Moe Levy, the district manager of Twentieth Century-Fox in Minneapolis.

Q. Where do you negotiate? A. Generally in my office.

Q. In Minneapolis? A. Yes, sir.

Q. At the time of those negotiations, has Mr. Levy ever refused to license you Twentieth Century-Fox product unless the Paramount Distributing Company should license that product to theatres operated by National Theatres? A. Never.

Q. Have you ever refused to license Twentieth Century-Fox pictures unless Twentieth Century-Fox—unless Na-

John J. Friedl—By Defendant—Cross

tional Theatres would buy Paramount pictures in some of its theatres? A. I have not.

Q. Was the subject ever discussed? A. Never to my knowledge.

Q. You operate in Minneapolis a number of first run theatres, do you not? A. Yes, sir.

Q. It appears from the evidence already in this case that during the 1943-44 season you played the picture "Holy Matrimony" in the Century Theatre? A. That is right.

Q. Why was it booked to that theatre? A. Well, as I recall the circumstances, we felt that the Century, because of its location and background, was the proper theatre in which to play the picture.

Q. It appears from the evidence that the picture "Heaven (1403)

"Can Wait" played in the State Theatre first and then was moved over to the Century. Why was that picture so booked?

A. What was the picture?

Q. "Heaven Can Wait." A. "Heaven Can Wait," as I recall, was previewed in the State Theatre and at a later date the picture was booked in that theatre and because of the business it did in its first week, it was moved to the Century for a second week.

Q. It appears that the picture "Bombers Moon" was played in the World Theatre. That is a much smaller theatre, is it not? A. Yes, sir.

Q. Do you recall the reason for that? A. I don't recall the particular reason. I don't believe that I ever saw "Bombers Moon", and I believe it was handled by our booking department and the Fox office and it was played in the World Theatre.

Q. It was not considered one of the top grossing pictures? A. No, it was not.

Q. It appears that the picture "A Tree Grows in Brooklyn" was played first in Radio City for a week and then

John J. Friedl—By Defendant—Cross

moved over for a week to the State Theatre and then for a week at the Century Theatre. Why was that booking made? A. Because of the size of the picture, its importance, and the business that it did. It played one week in Radio City and we felt that the picture was of such importance and was doing such an outstanding business that we would establish (1404)

lish a new precedent, which we did, by moving it to the State Theatre. That puts the picture in a better location and it enjoyed a fine week at the State, so we moved it to the Century for an additional week.

Q. Is the distributor, Twentieth Century-Fox, benefitted by the fact that you have a number of theatres in Minneapolis with different seating capacities? A. Yes, I believe so.

Q. Not all the Twentieth Century-Fox pictures are suitable for exhibition in the Radio City Theatre? A. No, they are not all suitable.

Mr. Seymour: Mr. Wright, they all yield to you, I believe.

Do you want this contract, by the way?

Mr. Wright: Yes, I want a chance to look at it.

Cross-Examination by Mr. Wright:

Q. Mr. Friedl, this agreement that you had with RKO in St. Paul and Minneapolis, is that still in effect? A. Yes, sir.

Q. The pooling operation?

Mr. Seymour: I object to the characterization of it.

Q. That agreement that you have with them is what is known in the trade as a first-run theatre pool, is it not? A. (1405)

Well, we have always termed it an operating agreement.

Q. Can you answer the question? A. I believe it has been so referred to, yes.

John J. Friedl—By Defendant—Cross

Q. The agreement covered at the time it was made, and still covers, all of the first-run theatres in those two towns, isn't that right? A. That is correct.

Q. You were referring to these situations where you say you follow independents in, I believe, Superior and Duluth. I call your attention specifically to Duluth, where you say there is an independent theatre that has RKO and Columbia Pictures first-run. Do you have a first-run theatre there, too? A. Yes, we have several first-run theatres.

Q. How many? A. We have the North Shore and the Garrick, they are both first-run, and the Lyric, which is a move-over theatre.

Q. And you play the product of all the other distributors first-run and on move-overs in those three theatres of yours? A. We do.

Q. Then you say you also operate a subsequent-run theatre? A. That is correct, the Strand.

Q. The Strand; and is there any independent subsequent-run in the town? A. Any independent subsequent-run?

Q. Yes. A. Yes, there are either three or four subsequent-run theatres in Duluth.

(1406)

Q. When does this subsequent-run of yours play with reference to first-run? A. It plays, I believe, 45 days after first-run. I am not absolutely sure of that.

Q. And it plays, does it not, all of the product that you play first-run there and on move-overs? A. Most of it, yes.

Q. As a matter of fact, it plays almost none of the product that plays first-run at the independent theatre, isn't that right? A. Well, I believe from time to time we play some pictures from the Granada Theatre, but that policy in Duluth has been changed from time to time because we have been in trouble in the Strand, and, if I might use the expression, we have kicked the policy around a little bit, and over a period of time, why, we have done one thing for a

John J. Friedl—By Defendant—Cross

while and then changed, and that would naturally affect the product.

Q. As a matter of fact, you know very well, don't you, that you don't play any regular second-run on RKO or Columbia in that subsequent-run house in Duluth and have never have— A. Well,—

Q. (Continuing) —while the independent has had the first-run, isn't that right? A. I don't believe it is.

Q. Do you know what the facts are? A. No, I don't. I don't know unless I check very carefully, but it seems to me that there have been occasions where we have played repeat (1407)

runs on the Granada from RKO and also Columbia.

Q. Do you have any knowledge as to what the clearance provisions are in the contracts that the first-run theatre has there with reference to subsequent showings in any other theatres in Duluth? A. Which theatre?

Q. The independent opposition first-run, the one that plays RKO and Columbia. Do you know? A. I presume they have the same clearance that we do.

Q. I say, do you know? A. No, I do not know.

Q. Is your testimony the same with respect to Superior, that is, do you know what product the first-run in Superior has, the independent? A. Yes.

Q. What are those? A. They have Columbia and RKO.

Q. And you have all the rest? A. Yes, sir.

Q. How many first-run theatres do you have there? A. We have two.

Q. Then you say you also operate a subsequent-run theatre in Superior? A. Yes, sir.

Q. And there is an independent subsequent-run? A. That is correct.

Q. As a matter of fact, you don't play there any regular subsequent-run of the product that plays the independent house first-run, do you? A. No, I don't suppose we play so much—play those pictures.

John J. Friedl—By Defendant—Cross

Q. Maybe an occasional picture? A. The pictures that (1408)

are played in the East Superior theatre play ahead of the Capitol Theatre—the Princess Theatre, rather, downtown, and the Princess is our subsequent-run.

Q. What is the name of the independent first-run? A. The Beacon Theatre.

Q. Do you know what the clearance provisions are in the first-run contracts that the Beacon Theatre makes? A. As I said in the case of Duluth, I presume it is practically the same clearance that we have, but I don't know. I have never seen their contract.

Judge Bright: When you play a picture subsequent-run in your theatre, that has been played first-run in an independent, aren't you informed of the clearance provision in the first-run theatre?

The Witness: The clearance is pretty well established and it is pretty definitely followed in all those cases, and we do not pay a great deal of attention to what the other fellow's clearance is. We assume it is on the same basis as ours, because, in the case of the large cities, they couldn't very well have a certain length of clearance in one theatre and a different clearance in the other, because they have the problem of serving the subsequent-run theatres, and a great deal of confusion would result if the clearances were not the same in all instances.

(1409)

Q. Of course, I take it, Mr. Friedl, when you play a regular subsequent run of pictures you know from the times at which they are made available approximately what the clearance is, is that right? A. Yes.

Q. But where you just pick up a picture occasionally, or spot book, you would not know what, of any, regular clear-

John J. Friedl—By Defendant—Cross

ance arrangements had been made by that distributor with the first-run theatre you were following, is that correct? A. That is correct, but I imagine if the distributor had any clearance existing which would be affected by our purchase of that particular picture, he would advise us of it.

Q. Now, in the situation in Minneapolis, St. Louis Park, is that a suburb of Minneapolis or St. Paul? A. Minneapolis.

Q. And then you say after the picture has finished the first-run or the first engagement in a first-run theatre, then 28 days later they go into your Uptown? A. Yes.

Q. And that is true even though it may be moved over two or three times, is that right? A. No, that is not right. The clearance dates from the conclusion of the engagement in the first theatre. If it closes on a Thursday night in Radio City, 28 days from that time it opens in the Uptown regardless of where it may be carried over.

(1410).

Q. Yes, that is what I understood the situation was. So that no matter how many times they may be moved over, it still goes into your Uptown 28 days after the conclusion of the first engagement? A. That is right.

By Judge Bright:

Q. Is that generally so in all of the theatres in your circuit? A. Well, this is the only situation that I can think of that is set up just exactly in that way. In St. Paul the situation is different. It goes into a first suburban run 49 days after the close of the engagement down there.

Q. I mean the second showing, it starts to date from the end of the original showing? A. That is correct.

Q. And the move-overs have nothing to do with extending the period of clearance? A. That is correct in our situation. I do not know how that works elsewhere in the country, but that is the way it is handled in our territory.

John J. Friedl—By Defendant—Cross

By Mr. Wright:

Q. Then after the picture plays at the Uptown you say it has 14 days over an independent in St. Louis Park? A. That is what the clearance calls for.

Q. Do you have any theatres in St. Louis Park? A. No.

Q. And the other situations that you referred to where you said there were some independents that played ahead of (1411)

your theatres,—now, were you referring to situations where there is open booking, where there is no clearance one over another; one may play first and then the other; or were you referring to definite clearance? A. Well, the clearance that is set up covers the city, and in that particular instance St. Louis Park has clearance over all of the—

Q. I am not referring to St. Louis Park; I am referring to the other situations you referred to on your direct testimony. You just named several theatres as sometimes playing pictures ahead of some theatres of yours. I am asking you if you were referring to situations where open booking prevailed or where there was actual clearance? A. Well, there is actual clearance because the theatres play the pictures on a given clearance break, and regardless of where they are located they have clearance over other theatres that follow them.

Q. Well, let me clear it up specifically: What were these other theatres that you named specifically as playing with or ahead of theatres which you operated in Minneapolis? A. Well, I will have to start with St. Louis Park because the clearance is dated from St. Louis Park.

Q. I say, apart from St. Louis Park. A. Well, the Nile Theatre, the Boulevard Theatre, the Edina Theatre played ahead of our operations. The Nokomis and the Loring, they (1412)

also play ahead of a lot of other theatres.

John J. Friedl—By Defendant—Cross

Q. Where are those theatres that you named? A. Where are they? They are subsequent-run theatres in Minneapolis.

Q. Are they in one section or several sections? A. They are in several sections.

Q. Are the theatres that you operate that they play ahead of in the same section or different sections? A. One of them is in the same section and one of them is not.

Q. Which is the one that is in the same section as the theatres you say play ahead? A. The Nokomis.

Q. And what is the independent theatre or theatres that is in the same section there? A. The Nile.

Q. And you say the Nile takes clearance over the Nokomis? A. That is right.

Q. And do you know how much that is? A. No, offhand I don't know.

Q. Are you sure that there is any actual clearance there as distinguished from just—— A. I don't know that it is written clearance, but on the basis of the existing clearance that is the way it works out.

Q. You know that they do play some pictures ahead of your Nile, is that right? A. They play them all ahead of the Nile.

Q. And what the contract provisions are that determine that, you don't know, is that right? A. I don't know anything. (1413)

about the contract provisions of the Nile Theatre's negotiations except that I do know that a clearance is set up in the town and that is the way it works.

Q. How far down is that run? A. Which run?

Q. That Nile run. A. I think it is 56 days after downtown, it may be dated from the Uptown. It would then be 38-48—it would be 24 days after the Uptown.

Q. Now, in this operating agreement that you referred to with respect to Minneapolis—I believe that is in evidence here as Exhibit 206—there is a reference to an operating

John J. Friedl—By Defendant—Cross

committee consisting of yourself and a Mr. Ludwig representing Minnesota, and a Mr. Singer and Mr. Ames, representing Singer Amusement. Who is Mr. Ludwig? A. Mr. Ludwig was at one time my associate in the operation of the Minnesota Amusement Company theatres, and he left our employ some time back in 1936 or 1937.

Q. He was an employee of Minnesota Amusement Company at the time this was made? A. That is correct.

Q. And Mr. Morgan Ames: who is he? A. Morgan Ames was the general manager of the theatres operated by Mort Singer.

Q. Now, the agreement, I note, says at page 3—this is in the form of a letter from Singer, Minneapolis, to you, do you recall that? The form of the original agreement was a letter (1414)

from Singer, Minneapolis, to Minnesota Amusement Company? A. Yes.

Q. And do you recall that at page 3 it says:

“Both you and the undersigned shall submit to each other at this time complete information as to all motion picture product which has been contracted for exhibition in the aforesaid theatres during the 1936-1937 playing season ending August 31, 1937, and the terms and conditions of all agreements with respect to the same.”

Do you recall that? A. Yes.

Q. That was done, of course? A. Yes, it was.

Q. And do you also recall this provision that says:

“The product of RKO Radio Pictures, Inc. shall be acquired through the undersigned for use in the aforesaid theatres on the same terms as such product shall be acquired by the companies affiliated with

John J. Friedl—By Defendant—Cross

RKO Radio Pictures, Inc., subject, however, in the case of each specific commitment to the approval of the operating committee."

Do you recall that provision? A. Yes, sir.

Q. And that was carried out? A. That was carried out for a brief period of time; and that reference was apparently put in there so that we would be protected and not be burdened with unreasonable film costs for RKO pictures. (1415)

Shortly after the operating agreement was set up, however, RKO requested that we take over the negotiation for all film, including that which they had previously contracted for as an individual situation.

Q. Well, you recall the next sentence there says:

"The product of Paramount Pictures, Inc. shall be acquired through you for use in the aforesaid theatres on the same terms that such product shall be acquired by companies affiliated through so-called partnership deals with Paramount Pictures."

Do you recall that provision? A. Yes.

Q. And that, I take it, was carried out? A. Just as the other was for our protection, that was for the protection of RKO.

Mr. Wright: If the Court please, when I can locate the clearance agreements that are in evidence which relate to his theatres there will be some further cross-examination. I do not know whether we can recess now, or perhaps if we adjourned for lunch and came back earlier there would not be any loss of time.

Judge Hand: Have you got those papers?

Mr. Wright: They can be gotten together. They are in evidence.

John J. Friedl—By Defendant—Cross

Judge Bright: A non-competitive area?

Judge Hand: What are the exhibit numbers, 205 and 206?

(1416) Mr. Wright: Oh, these agreements? I have these

here. I was referring to answers to interrogatories which were also in evidence which set forth—

Mr. Seymour: If it would equally suit your Honors and Government counsel, if we could recess for a few minutes it would suit us better. Our problem is that we have great difficulty getting luncheon, and if we recess early and have to come back early, I am afraid we would be very much handicapped on our side of the table. So if your Honors would take a brief recess until Mr. Wright finds it, it would suit our convenience.

Mr. Wright: I think this could have been avoided were we told within a reasonable time that the witness would be called.

Mr. Seymour: Well, I only decided this morning that he would be a witness, Mr. Wright.

Judge Hand: All right. We shall take a short recess, five minutes.

(Short recess.)

Mr. Wright: Shall I proceed?

Judge Hand: Yes.

By Mr. Wright:

Q. Mr. Friedl, I call your attention to the clearance agreement entered into between your company and Loew's, Inc. with reference to certain pictures distributed during the 1943-44 season, which is in evidence here, in answer to an

(1417) interrogatory—

John J. Friedl—By Defendant—Cross

Mr. Seymour: What is the exhibit number, Mr. Wright?

Mr. Wright: This is Exhibit 57-24; and the schedule of clearance I am referring to appears in type-writing on the second page.

Q. (Continuing) Now, this schedule of theatres up at the left hand there, those are your first-run theatres in Duluth? A. That is correct.

Q. Norshor and Garrick? A. Yes.

Q. And then that notation "Cloquet, Two Harbors" at the right of the phrase "14 days over," that refers to a couple of towns rather than to a specific theatre? A. Yes.

Q. And then the notation "When 25 cents clearance to be increased when price is less." Now, that means, does it not, that your theatres in Duluth take 14 days over them if they charge 25 cents admission price, is that right? A. Yes, I believe that this—

Q. A minimum price of 25 cents? A. Yes. I believe, however, that this was set up at the suggestion of the distributor.

Q. I am not asking you at whose suggestion it was set up; I am merely trying to find out what the agreement is. A. There it is.

(1418)

Q. There is no question, is there, in your mind but what if those theatres in Cloquet and Two Harbors charged less than 25 cents, then your clearance is automatically increased over them; is that right? A. That is right.

Mr. Caskey: Mr. Friedl, would you please talk up. The Witness: Yes, that is correct.

Judge Bright: Mr. Wright, the same criticism was made of me, that when I am so close to the witness we get confidential; and the same situation exists when you get too close to him.

John J. Friedl—By Defendant—Cross

Mr. Wright: It is a little hard for me to question him without having him look at the exhibit. That is the difficulty. But I shall try to speak up.

Q. Now, I notice over there, further on on the list, you have a statement "56 days over," and then the names Dorick, Star, West, with a notation "When 25 cents." Those are subsequent-run independent theatres in Duluth are they not?

A. Yes.

Q. And the phrase "When 25 cents" means, does it not, that they are only entitled to play within 56 days of your first run when they charge an admission of at least 25 cents?

A. That is correct, in these particular instances.

Q. And then the following phrases there which state, "70 days over" those same theatres "when 20 cents" and "112 (1419)

days over" over those same theatres "when 15 cents", mean, do they do, that if they charge those lower prices of 20 or 15 cents they cannot then play prior to either 70 days after first-run or 112 days, as the case may be? A. That is right.

Judge Bright: Are they the same named theatres, on those three?

Mr. Wright: Yes, there is a schedule of the three prices and three clearances for those three theatres.

Q. Now, could you tell me the theatres on the schedule there that are operated by you other than "Norshor and Garrick"? A. The Lyric?

Q. The Lyric? What else? A. Well, we operate in Superior.

Judge Bright: Keep your voice up, Mr. Friedl.

The Witness: We operate in Superior, and we operate the Strand.

John J. Friedl—By Defendant—Redirect

Q. So that the four theatres that you operate are the Norshor, Garrick, Lyric and Strand, is that right? A. That is right.

Q. And the Lyric is what, the move-over house that you are referring to? A. Yes.

Q. That has the same clearance over subsequent-runs as the Norshor or Garrick? A. Yes.

Q. 35 days? A. Yes.

(1420)

Q. Then the Strand— A. You see, Mr. Wright, there are occasions where the Lyric instead of playing a carry-over picture will play a first-run picture, and this clearance is set up so that is taken into consideration when that happens.

Q. Now, the Lyric, as I read the schedule there, follows the first-run— A. No.

Q. —the Strand, rather, follows first-run by 49 days, is that right? A. Yes.

Q. And the earliest independent, however, which may play the picture follows by 56 days, does it not? A. That is correct.

Q. So the pictures, then, are played at all of your four theatres before they are permitted to be played in any of the independent subsequent-runs; that is, the pictures which you play in those theatres? A. That is correct. The Strand is a downtown theatre, and all of the factors of clearance indicate the soundness of that 56-day break.

Mr. Wright: I think that is all.

Redirect Examination by Mr. Seymour:

Q. Mr. Wright has directed your attention to what appear to be a few exceptions in and around Duluth to your testimony that your clearance contracts did not contain a reference to admission price of the subsequent-run. Now, do

John J. Friedl—By Defendant—Redirect

you know whether there are any other exceptions? A. I know (1421)

of no others. In some cases our clearance with Metro pictures differs from the clearance with other companies, and in this particular instance the admission price is mentioned, I believe/ for the reason that, under difficult competitive conditions price-cutting has resulted in the past, and a lot of the tricks that have been used by smaller theatres have been inaugurated, and I believe that the distributor was principally concerned in getting this in so that the situation just did not get out of hand so far as the subsequent-run theatres were concerned.

Q. So far as you know does that apply only to Metro in that area? A. To the best of my knowledge it does. I do not believe it is in the other—in the setup for clearance with the other companies.

Q. Now, you were asked by Mr. Wright with respect to the availability following a move-over in the Twin Cities; and if I understood you correctly, you said that the picture was available subsequent-run dating from the conclusion of the original engagement rather than the move-over, is that right? A. That is correct.

Q. Now, does that availability apply both to theatres operated subsequent-run by Minnesota Amusement and to theatres operated by independent operators? A. Yes, it does.

Q. So that the availability in connection with pictures (1422)

which are moved over into other theatres of Minnesota Amusement dates from the conclusion of the first-run of the engagement as to all subsequent-run theatres, whether affiliated or not, is that right? A. That is correct, yes.

Q. Now, I think you said something about the need for booking by theatres on an availability which is the same for various distributors; and I wish you would explain that to us. Is it the desire of the exhibitor, and is it important from

John J. Friedl—By Defendant—Redirect

the point of view of the operation of his business to be able to book pictures of all distributors upon a common or similar availability? A. Yes, it is. It is quite necessary. The clearance calls for the pictures to break at a certain date for the different theatres in the Twin Cities area, and this—

Q. When you say "break", do you mean that makes them available? A. It is important—they become available on the date set up in the clearance—and it is important that the exhibitor play the pictures on the date, the date of the clearance break, for his own benefit; and it is vitally important from the distributor's standpoint because he has a limited number of prints, and he has got to clear those prints and book them on the dates that are set up in the clearance so that he can use them elsewhere and get the utmost out of the prints in the various situations.

(1423)

Q. Now, there is a booker that operates for the exhibitor, is there? A. Well, the distributor maintains or has a booking department.

Q. That is in the distributor's own exchange? A. That is in the distributor's own exchange.

Q. And each distributor maintains a separate exchange? A. That is correct; and the manner in which they book the pictures—the independent theatres see the booker in each film exchange and set the dates on which these pictures are going to play and have those dates confirmed to them. In our case our booking department handles it for all of the theatres which we operate, but the confirmation comes from the booker in the film exchange.

Q. Now, is there any difference in the interest of the exhibitor whether he is affiliated or not in having the pictures of different distributors available to him at the same time or on the same availability date? A. Well, those pictures become available on the date of the setup in the clearance, and they become available not only for the affiliated theatres

John J. Friedl—By Defendant—Redirect

for all of the other theatres who happen to be in that particular bracket.

Q. If an exhibitor had different availabilities on the pictures of different distributors, would that create any problems in the operation of his theatre? A. It would create a very difficult problem in the distribution of pictures. If (1424)

clearance was set up on anything but an organized basis, and dates would be breaking at different times for different theatres, it would be an almost impossible situation from the standpoint of the distributors to distribute prints.

Q. How about the exhibitor? Would it create problems for him? A. Well, the exhibitor is naturally interested in adhering strictly to the clearance break that he gets. Because if he does not, if he falls behind his competition are playing ahead of him; so he has the very vital interest in it.

Q. When you say "clearance set up on an organized basis," do you mean simply the similarity of clearance? A. That is right, the clearance in the Twin Cities situations is the same with all distributing companies, and it has got to be that way in order for the pictures to flow properly.

Q. So far as you know does that result from any agreement or understanding among the distributors?

Mr. Wright: If the Court please, he has been offered here as a witness who knows nothing about what the distributors do for each other. I do not see how this advances the case.

Judge Hand: Overruled.

(1425)

A. Well, the clearance, so far as we are concerned, is negotiated individually with each distributor. This clearance, however, is a pattern that has developed over a period of years. It is discussed and it is agreed, and sometimes changes come about, but it is, after all, the development of

John J. Friedl—By Defendant—Redirect

an arrangement that has existed for some time. It is based on precedent more than anything else.

Q. When you say it is discussed and agreed, are you talking about the operation of your company? A. Yes.

Q. And with whom is it discussed and agreed? A. With each individual distributor.

Q. Now, Mr. Wright asked you about some provisions in the agreement relating to the operation of the Orpheum theatres, and the provisions were those which dealt with the price of RKO pictures and the price of Paramount pictures. Now I should like to ask you this: In negotiating with RKO for RKO pictures, since the date of that agreement have you received any information as to the terms on which RKO pictures are played in other theatre-operating companies in which Paramount has an interest? A. No, sir.

Q. Do you ask RKO for that information? A. No, sir. Under this operating agreement and operating committee, it requires the approval of each party for any film negotiations conducted by the other. Originally when it was set up (1426)

RKO negotiated for the pictures of RKO, Columbia, Universal, and half of Warner's, and we negotiated for the balance of the pictures. Each at that time would submit the terms to the other. They would submit them to me and I would submit them to them for approval; and then later they requested that we take over the entire booking; and the only thing that happens there, when the deal is made I submit to them for their approval the terms agreed upon for the various pictures.

Q. And whom do you submit to, to the local theatre man? A. No, I submit it to the present members of the operating committee. Those which Mr. Wright read from the original agreement are different now.

Q. Now, with respect to the licensing of Paramount pictures, do you obtain any information or knowledge as to the

John J. Friedl—By Defendant—Redirect

terms on which Paramount pictures are licensed in RKO theatres? A. No, sir.

Q. So that as a practical matter each of those film deals is negotiated on its own merits for your theatres or the theatres involved without regard to what is being done in any other operating company, is that right? A. That is absolutely so.

Mr. Wright: Pure argument, if the Court please.

Judge Goddard: Mr. Friedl, you have referred to the fact that the limited number of prints had some (1427).

relation to clearance; but it has no relation, has it, or, if it has any, it is little in connection with the length of the clearance, because I assume that during that clearance period the print is not used by anyone?

The Witness: Well, perhaps I can explain to you what happens in the Minneapolis area: When a picture is released and plays in the first-run downtown, and from the close of that period until 28 days later the prints are then booked by the distributor into some of the surrounding towns; and then when the surrounding towns have played those pictures during that 28-day period the prints then come back to Minneapolis where they are used for the various subsequent-run.

Judge Goddard: But during this 28 days the print is not used by anyone, is it?

The Witness: Yes, it is booked by the distributor to some of the theatres in the out-of-town situations.

Judge Bright: Some other area?

The Witness: Yes.

Judge Goddard: Some other area?

The Witness: Yes.

John J. Friedl—By Defendant—Recross

The Witness: I believe so; but I do not know to what extent or how far they go with those prints, but I do know they play them out of town and then bring them back.

(1428)

Judge Goddard: Beyond the limits of that area?

The Witness: Yes.

Judge Goddard: Thank you.

By Mr. Seymour:

Q. That is, they are not played in the area to which clearance applies? A. No, sir, they are not; they are played outside of that area.

Q. But the prints are not idle during that period? A. No, they are not.

By Mr. Caskey:

Q. They are played first-run in the other Minnesota and North Dakota and South Dakota towns during those 28 days? A. That is correct.

Q. Like Rochester, for example? A. Possibly; could be.

Mr. Caskey: That is all.

Mr. Seymour: Any further questions, Mr. Wright?

Mr. Wright: Yes, one or two.

Recross Examination by Mr. Wright:

Q. As to the print supply, of course, you exchange prints even between one exchange and another in order to fill certain dates. That is, you may bring in prints from some other area? A. That has happened a number of times where there is a shortage of prints, they borrow prints from other distributing branches.

Q. Now, this history of that clearance setup in Minneapolis, which I believe you said was uniform—do you recall

(1429)

John J. Friedl—By Defendant—Recross

that at one time there you had a six months clearance over every subsequent-run theatre there that charged 10 cents admission, didn't you? A. I believe there was some such arrangement. I don't recall distinctly what it was.

Q. And do you remember when it was that the clearance over the 25-cent theatres in Minneapolis was moved up from 28 to 56 days? A. No, I don't recall that.

Q. Well, you know it did happen? A. I don't remember that it happened.

Q. It happened before you went there—when was it that you went out there? A. In 1932.

Q. 1932? A. Yes. I don't recall what clearance prevailed when all of the subsequent-run theatres were charging 10 cents, but it was a situation that had no parallel anywhere in America, where all of the subsequent-run independent theatres charged 10 cents admission for pictures that were playing in first-runs for 40 and 50 cents.

Q. In any event, you don't have that 10-cent problem now, is that right? A. No.

Mr. Davis: I did not hear that last question.

(Last question and answer read.)

(Witness excused.)

Mr. Seymour: I have another witness. Would your Honors like to start with him now or would you like to recess?

Judge Hand: We will adjourn to 2.10.

(Recess to 2.10 p. m.)

(1430)

AFTERNOON SESSION

Mr. Seymour: If the Court please, I now have a copy of each of the Paramount exhibits for each member of the Court—I did not have them available the

Edward C. Beatty—By Defendant—Direct

other day—and I would be glad to hand them to the clerk to distribute them to your Honors.

EDWARD C. BEATTY, called as a witness on behalf of defendant Paramount, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. What are your present business connections? A. I am president and treasurer of W. S. Butterfield Theatres, Inc. and Butterfield Michigan Theatres Company.

Q. Where are your headquarters? A. Detroit.

Q. How long have you been connected with those companies? A. Since 1927.

Q. When did you first have any connection with the motion picture industry? A. 1910.

Q. Between 1910 and your connection with these companies would you describe generally your experience in the business. A. In 1910 I started in small theatres, doing most everything around a theatre, serving in the capacity of treasurer, also doorkeeper and other odd jobs, and with the exception of one year I continued in that position until 1913, (1431)

at which time I moved to Michigan, Saginaw, Michigan, and acted as assistant manager in Saginaw; then moved to Bay City for a year or so, and back to Saginaw. I then moved to Battle Creek in the general offices of the company then running those theatres.

Judge Goddard: A little louder, please.

Q. When was it you first became connected with the general office of the Butterfield Circuit? A. 1915.

Q. You remained with that circuit until the organization of the present companies in 1927? A. Yes, sir.

Edward C. Beatty—By Defendant—Direct

Q. Was the Butterfield Circuit operating a number of theatres in 1927? A. Yes, sir.

Q. And were those theatres which Mr. Butterfield, or the Butterfield Circuit, had built or acquired prior to 1927? A. Yes, sir.

Q. Did they include a number of vaudeville theatres? A. Yes, sir.

Q. Did they include some legitimate theatres? A. Yes, sir.

Q. Were those theatres gradually or eventually converted for the primary purpose of motion picture exhibition? A. Yes, sir.

Q. In the vaudeville theatres, did the Keith vaudeville play? A. Yes, sir, the Western office of Keith Vaudeville. (1432)

Q. In 1927 the new company was formed? A. Yes, sir.

Q. What was the name of that company? A. W. S. Butterfield Theatres, Inc.

Q. That is the company of which you are still president, of which you are now president? A. Yes.

Q. When did you become president? A. 1936.

Q. That company operates theatres in Michigan? A. Yes, sir.

Q. In addition to the theatres which it has a complete interest in, does it also operate some theatres where there are other stockholders having an interest? A. Yes, sir.

Q. Are those other stockholders persons unconnected with Butterfield or with any distributor of motion pictures? A. Yes.

Q. Was there another Butterfield Company formed in 1928? A. Butterfield Michigan Theatres Company.

Q. You are president of that company as well? A. Yes, sir.

Q. Does that company also operate theatres? A. Yes, sir.

Edward C. Beatty—By Defendant—Direct

Q. Does it have an interest in a theatre in which there are other stockholders? A. Yes, sir.

Q. Unconnected with the Butterfield interests or any distributor? A. That is right.

Q. When did Paramount first acquire an interest in W. S. Butterfield Theatres, Inc? A. January 1, 1927.

(1433)

Q. What was the extent of the interest which it acquired? A. 25 per cent.

Q. Does it still have that interest? A. Yes, sir.

Q. At or about the same time did B. F. Keith acquire an interest in that company? A. Yes, sir.

Q. What was the extent of its interest? A. 10 per cent.

Q. Is that interest still retained? A. Yes, sir.

Q. At that time was Mr. Butterfield friendly with the Keith interests? A. Very friendly.

Q. They were the same interests that had supplied his vaudeville acts? A. Yes.

(1434)

Q. Now, who owns the other 65 per cent of the W. S. Butterfield Theatres? A. Mr. Butterfield had a company called the Bijou Theatrical Enterprises Company, operating the theatres prior to the formation of the W. S. Butterfield Theatres, Inc. They own about 60 per cent, and 5 per cent is owned by various small stockholders connected with the organization.

Q. As to Bijou Theatrical Enterprises and the other small stockholders that you referred to, they are wholly unconnected with any distributor, is that right? A. That is right, yes, sir.

Q. And are you one of the stockholders? A. Yes, sir.

Q. Did Paramount acquire an interest in Butterfield-Michigan? A. Yes, sir.

Q. And what was the extent of that interest? A. 33 1/3 per cent.

Edward C. Beatty—By Defendant—Direct

Q. And did B. F. Keith also acquire an interest in Butterfield-Michigan? A. Yes, sir.

Q. What is the extent of that interest? A. $33\frac{1}{3}$ per cent.

Q. And who owns the remaining interest in Butterfield-Michigan? A. Bijou Theatrical Enterprises Company.

Mr. Wright: Did he give the dates when those were acquired?

Q. Were those interests acquired in 1928? A. Yes, sir. (1435)

Now, dealing with Butterfield Theatres, Inc., W. S. Butterfield Theatres, Inc., what representation does Paramount have on its board of directors? A. Two members of the board.

Q. Out of how many? A. Six.

Q. And has it had that same amount of representation since the beginning? A. Yes, sir.

Q. And what representation, if any, does the Keith interest have on this board? A. One member.

Q. Now dealing with Butterfield-Michigan, what representation does Paramount have on the board? A. Two members.

Q. And what representation does Keith have? A. One member.

Q. So that in both companies the remaining stock interests have 50 per cent of the board? A. Yes, sir.

Q. And has that been so since the beginning of those corporations? A. It has.

Q. Who manages and operates the affairs of the companies? A. I do.

Q. Who determines the operating policies of the companies? A. I do.

Q. Does that include determination as to the film licenses which are to be obtained and the terms on which they are to be obtained from the various distributors? A. Yes, sir.

Edward C. Beatty—By Defendant—Direct

(1436)

Q. Does Paramount interfere in any way with your decisions in that regard? A. No, sir.

Q. Does Keith or RKO interfere in any way with your decisions? A. No, sir.

Q. Do you play Paramount pictures in all the theatres? A. In all the towns but not in all the theatres.

Q. Do you play RKO pictures in all the theatres? A. I play RKO in all the towns but not in all the theatres.

Q. Now do you license the pictures of other distributors for the theatres under your supervision? A. Yes, sir.

Q. And do you license the pictures of all the distributors? A. Practically all of them, yes.

Q. Do you license the pictures of the distributors who are defendants in this suit? A. Yes, sir.

Q. Do you also license the pictures of distributors who are not defendants in this suit? A. Yes, sir.

Q. Do you license, for example, the pictures of Republic? A. Yes, sir.

Q. Monogram? A. Yes, sir.

Q. P.R.C.? A. Yes, sir.

Q. Where are the negotiations for the licensing of pictures of these distributors conducted? That is, all the distributors? A. The Detroit office.

Q. And are they conducted by you or under your supervision? A. Yes, sir.

(1437)

Mr. Davis: Where did he say they were conducted?

Mr. Seymour: Detroit.

Q. And is that at the office of the Butterfield Company? A. Yes, sir.

Q. Do you receive any instructions from Paramount or RKO as to what distributors you are to deal with? A. No, sir.

Edward C. Beatty—By Defendant—Direct

Q. Or as to the terms on which you are to license pictures? A. No, sir.

Q. Or as to the pictures you are to license? A. No.

Q. Do you receive from Paramount or anyone else any information as to the film deals it is negotiating or has arranged with the theatres in which any distributor has an interest? A. No, sir.

Q. Do you receive any information as to what film deals are negotiated or arranged between any distributor and any other theatres in which Paramount has an interest? A. No, sir.

Q. Or do you receive any information as to negotiations or arrangements made with other distributors for RKO theatres? A. No, sir.

Q. Is there any relationship whatever, as far as you are concerned, between the film deals you arrange for exhibition in the theatres under your supervision and the film deals made by other distributors elsewhere? A. No, sir.
(1438)

Q. How many theatres in all are the several Butterfield companies interested in? A. 116.

Judge Goddard: 116?

The Witness: Yes.

Judge Goddard: Will you speak a little louder, please.

Q. Now do your license contracts generally provide for clearance over theatres playing subsequent to yours? A. Yes, sir.

Q. Do you know of any license contract, or at least do you think of one now, which contains any reference to the admission price at which the subsequent-run theatres are to exhibit pictures subsequent-run following clearance in your theatres? A. No, sir.

Edward C. Beatty—By Defendant—Direct

Q. Do you have any master contracts with distributors?
A. No, sir.

Q. Are each of the theatres generally licensed on individual contracts? A. Usually the contracts are made covering certain pictures for each town.

Q. But at least the contracts do not cover all the theatres in all the towns? A. No, sir.

Q. And they are limited generally to the theatres in a particular town, is that right? A. Yes, sir.

Q. Have you any franchise agreements? A. We have no franchise agreements at the present time. We have been (1439)

negotiating with one of the companies, Columbia I believe, for a two-year agreement; but there is no other agreement like that. They are bought from time to time.

Q. Now, prior to the time that Paramount had any interest in the Butterfield circuits, were the theatres in those circuits Paramount customers? A. Yes, sir.

Q. And are they showing Paramount pictures? A. For the most part, yes, sir.

Q. Did you have anything to do with the making of an operating agreement with respect to certain theatres in Grand Rapids, Michigan? A. Yes, sir.

Q. And when was that agreement made? A. 1933, the fall of 1933.

Q. Did it involve certain theatres in which RKO-Midwest was interested? A. Yes.

Q. How many? A. Two.

Mr. Wright: Excuse me. Are you talking about an agreement that is in evidence now?

Mr. Seymour: I think it is, Mr. Wright. It is one of yours.

Mr. Wright: Well, can we have it referred to by exhibit number?

Edward C. Beatty—By Defendant—Direct

Mr. Seymour: I will get the exhibit number, if I may proceed.

Q. And what theatres that Butterfield was interested in (1440)

were involved? A. Three.

Q. And they were all in Grand Rapids? A. Yes.

Q. At the time of the agreement were both the RKO theatres in operation? A. No; one of them was closed.

Q. And at that time what was the general economic situation in Grand Rapids? A. Very bad.

Q. Did it differ from the economic situation generally, or was there any particular reason why it was bad in Grand Rapids? A. Well, the situation generally through Michigan was bad, and in Grand Rapids particularly. Grand Rapids is largely a furniture city, and the furniture business was down.

Q. Now, do you know what the status of the operation of the RKO theatres was in Grand Rapids at that time? A. Well, inasmuch as one theatre was closed, I think it was very poor.

Q. Do you know why it had been closed? A. A lack of business, I believe.

Q. And do you know how successfully the other theatre was operating? A. Apparently not very successful.

Q. Well, now, had both of them been operated as first-run theatres? A. The Regent Theatre had been operating as a first-run theatre, and the Keith Empress had been operating with various policies.

Q. Was the Keith Empress one that was closed? A. Yes. (1441)

Q. It had been operating occasionally as a first-run theatre? A. I am not so sure, but it had vaudeville in it and it had had various types of picture programs, but I am not sure whether it ever operated first-run or not.

Edward C. Beatty—By Defendant—Direct

Q. How did the size of those two theatres compare with the size of the theatres in which Butterfield was interested?

A. They were larger.

Q. Now, what was the reason for making the operating agreement? A. Well, to meet economic conditions, reduce expenses, and accomplish a much better operating set-up for the community, and generally for economy purposes.

Q. What economies were effected as a result of the operating agreement? A. Well, we were able to cut down the organization necessary to run the theatres; reduce advertising considerably; place the top pictures in a large house which accommodated the business to a better advantage, and generally to accomplish a more effective operation.

Q. Did you change the management of those theatres?

A. Yes, sir.

Q. And manage them locally? A. Yes, sir.

Q. And were any changes made in the larger theatre as far as improvements were concerned? A. I believe we reduced the price and changed the equipment, brought it up to date; new projection equipment; new sound; and generally improved the entire equipment of the theatre.

(1442)

Q. And how about the other theatre? Were any changes made in that? A. We did practically the same thing in the other theatre, although not to such an extent.

Q. Was the upshot of that arrangement that the public got better facilities for seeing pictures in Grand Rapids?

A. Very much better, yes.

Mr. Wright: That is objected to, if the Court please. I do not suppose we are convened here to determine whether it is rational or whether there are business savings in the elimination of competition. There is not any question about that. I do not think this is a proper subject for testimony at all.

Judge Hand: Overruled.

Colloquy

Mr. Seymour: I think it is. I think the question is whether or not there is any reasonableness—

Judge Hand: I have overruled the objection.

Mr. Seymour: My colleagues say, Mr. Wright, that the operating arrangement here is not in evidence.

Mr. Wright: Well, could we have it?

Mr. Seymour: If there is a written agreement, as I assume there is, we will get it for you:

(1443)

Mr. Seymour: I think I am through with my direct examination of this witness, but I would like to say this: I am prepared to call, if necessary, the operating heads of many of these companies in which Paramount has an interest. I have now called three, Mr. Mullin, Mr. Friedl and Mr. Beatty. If the Government will stipulate with me, on the details we will work out with them, that the other operating heads of these other companies would testify in accordance with the testimony that these gentlemen have given, that there is no relationship at all between the film deals made by their companies and film deals made either by the other distributors or by Paramount, I will dispense with burdening the Court with further testimony in that respect. I should be glad to have Mr. Wright tell us whether he is willing to make that stipulation.

Mr. Wright: I think there has been some variation here. I would suggest that if he has specific testimony he wants from these gentlemen, if he will just put it in affidavit form, as we told him before, we will be glad to stipulate they will testify in accordance with the affidavit. I would like to see precisely what he expects to elicit from them before I make any general stipulation.

Edward C. Beatty—By Defendant—Cross

Mr. Seymour: I said I would submit to Mr. Wright the precise form. These fellows are scattered all over the country, it isn't very practical to get (1444)

affidavits, but I will submit statements of what they will testify. If Mr. Wright is agreeable, we will do that rather than call the rest of these gentlemen in from all over the United States to testify, when the substance of their testimony will be the same. I had assumed it would save the Court's time, and that was one of the things the Government was interested in, too, to have a stipulation as to their testimony, and I will submit to Mr. Wright the form of stipulation as to their testimony which I have in mind.

Mr. Wright: I see no occasion for having called any of them. We can do with these what I think we could have done with the others.

Mr. Seymour: As long as we can do it with these, that is what I am interested in now. Is that agreeable to the Court, if we can work that out with Government counsel?

Judge Hand: Yes, if you can.

Mr. Seymour: If we cannot, I will have a great many of them, and I hope to save your Honors that burden.

Judge Bright: He said something, that he saw no occasion for your calling any of them. That won't go in the stipulation, will it?

Mr. Seymour: No, no, that will not be in the stipulation.

Are there any questions from other defendants?

(1445)

Cross-Examination by Mr. Caskey:

Q. Mr. Beatty, do you license Twentieth Century-Fox pictures in most of the towns in which Butterfield operates?

A. Yes, sir.

Edward C. Beatty—By Defendant—Cross

Q. With whom do you currently negotiate those license agreements? A. The exchange manager in Detroit.

Q. What is his name? A. Joseph Lee.

Q. In the course of those negotiations have you ever conditioned the licensing of Twentieth Century-Fox pictures in your theatres upon Twentieth Century-Fox licensing its pictures to other corporations in which Paramount has an interest? A. No, sir.

Q. Has Mr. Lee ever conditioned the licensing of the Fox pictures to you upon the condition that other corporations in which Paramount has an interest license the same pictures? A. No, sir.

Q. Do you discuss at the time of these negotiations whether or not the subsidiaries of National Theatres Corporation have licensed Paramount pictures? A. The only thing we discuss is the theatres in the towns under consideration.

Q. In Michigan? A. In Michigan.

Q. Is there any part of those discussions whether or not subsidiaries of National Theatres on the West Coast are buying Paramount pictures? A. No, sir.

(1446)

Mr. Wright: That is not testimony, if the Court please. He is just putting argument in his mouth.

Mr. Caskey: Sir?

Mr. Wright: I say that you are putting an argument in his mouth. That question didn't call for any testimony. Is there any part of those discussions?

Mr. Caskey: By "Is there any part of those discussions," I mean, any words said about the subject. It seems to me that is a question of fact.

Judge Hand: Go ahead, he may answer.

The Witness: Will you repeat the question, please?

(Question and answer read.)

Edward C. Beatty—By Defendant—Cross

Q. In the fixing of the prices which you will pay for Fox pictures, say, in Grand Rapids, is there any effort on your part to secure the same terms as the subsidiaries of National Theatres obtain Paramount pictures for? A. No, sir.

Q. Do you have any knowledge of that subject? A. No, sir.

Judge Hand: Any more questions on direct?

(No response.)

Judge Hand: Any questions, Mr. Wright?

Mr. Wright: Yes.

Cross-Examination by Mr. Wright:

Q. I understand you to testify that with reference to (1447)

these two corporations of the W. S. Butterfield Theatres, Inc. in which Paramount owns only 25 per cent and B. F. Keith owns 10 per cent, those two corporations had half of the directors, is that right, although between them they own only 35 per cent? A. One has two directors and one has one.

Q. And there are only six? A. That is right.

Q. Is there some agreement that covers that distribution of directorships there? A. I think so, yes, sir.

Q. Have you got a copy of that agreement or do you know what the agreement is? A. I am not very familiar with the agreement today because I haven't looked at it in ten years.

Q. There was an agreement made at the time the stock interest of Paramount and Keith were acquired? A. Yes, sir, I think so.

Q. Could you give us a copy of it? A. I think the counsel can secure a copy.

Mr. Seymour: I will endeavor to get a copy, Mr. Wright, if there is such an agreement.

Colloquy

Mr. Wright: After we have seen that agreement and the pooling agreement, which has been referred to, we might have some questions we would want to ask him. We have nothing more at this time.

Mr. Seymour: I will endeavor to get them for you and make them available as promptly as I can.

(1448)

Then, Mr. Beatty, you are excused provisionally subject to Mr. Wright's perhaps asking you something else after he has seen the agreements.

(Witness excused.)

Mr. Seymour: Subject to the stipulation which I mentioned, at the conclusion of my direct of Mr. Beatty and subject to certain other stipulations which I am going to try to work out with Mr. Wright, to relieve the Court of the testimony of other witnesses, including division managers in the distribution department, where Mr. Wright has been good enough to say he would stipulate, I am going to submit a form, and perhaps another stipulation or two, I am going to turn the further presentation of evidence over to counsel for one of the other companies. It is possible that before the case for the defense closes I may want to call another witness or two, but these stipulations I think will make that unnecessary. So your Honors will have a change in the direct examining. I am not quite sure who is going to follow me, but I guess he knows.

(1449)

Mr. Caskey: If your Honors please, I have stipulated with the attorneys for the plaintiff as to the testimony of Spyros P. Skouras and I should like to read at this time three pages of it:

Spyros P. Skouras

"IT IS HEREBY STIPULATED between the attorneys for the plaintiff and the defendants, Twentieth Century-Fox Film Corporation and National Theatres Corporation, that if called, Spyros P. Skouras would testify as follows:"—

Judge Hand: What is his name?

Mr. Caskey: Spyros P. Skouras.

Mr. Wright: Of course, if the Court wants it done this way, we have no objection, but the purpose of course in stipulating on our part was to save time, so it wouldn't be necessary to go through this procedure. If we are going to have this, I suppose we might as well have the witness on the stand.

Mr. Caskey: This has been put into question and answer form.

"Q. What is your name and address? A. Spyros P. Skouras. I reside at 2 Shore Road, Greenhaven, Rye, New York.

"Q. What is your occupation? A. I am president of Twentieth Century-Fox Film Corporation and have been since April, 1942.

"Q. How long have you been engaged in the motion picture business? A. For more than 25 years.

"Q. What was your position immediately preceding your election as president of Twentieth Century-Fox Film Corporation? A. From 1935 to 1943, I was president of National Theatre Amusement Co., Inc., which performed supervisory services in the operation of the theatres operated by subsidiaries of National Theatres Corporation. I was also vice-president and principal executive officer of National Theatres Corporation.

"Q. State your experience in the motion picture industry. A. I commenced as an operator of a small theatre in St.

Spyros P. Skouras

Louis with my brothers. By 1928, we had developed a number of first-run and neighborhood theatres in St. Louis and we sold our interests to Warner Bros. I came to New York as general manager of its theatre department, and continued as such until early in January, 1931. At that time, I left and formed a corporation in which a subsidiary of Paramount was to have the largest interest and which proposed to acquire and operate theatres along the Atlantic seaboard. Financial conditions in the country made that impossible, and in the fall of 1931, my brothers and I formed Skouras Theatres Corporation and leased or sub-leased from Fox Metropolitan Playhouses certain theatres in metropolitan New York. At that time, Fox Metropolitan was on (1451)

the verge of insolvency and its theatres were losing a great deal of money. In the early spring of 1932, I was employed by Wesco Corporation, with my brother Charles, to operate its theatres. During the spring of 1933, the principal subsidiary of Wesco went into bankruptcy and I continued on as an officer of Wesco Corporation, participating in the reorganization of the affairs of its subsidiaries until the company was reorganized and its name changed to National Theatres Corporation, about 1935.

"Q. Is Twentieth Century-Fox Film Corporation affiliated with United Artists Theatre Circuit, Inc.? A. No, sir. Twentieth Century-Fox has no financial interest of any kind in United Artists Theatre Circuit, Inc. It does not participate in the management of that company. The only possible connection is that Fox West Coast Theatres Corporation, a subsidiary of National Theatres Corporation, owns 70% of the stock of United West Coast Theatres Corporation, and a subsidiary of United Artists Theatre Circuit, Inc., owns the remaining 30%. United West Coast Theatres Corporation leases and operates a number of theatres in California. These theatres have been operated by affiliates of Fox West Coast

Spyros P. Skouras

Theatres Corporation since the fall of 1931. They are now being operated by Fox West Coast Agency Corporation under a standard form of service agreement made between the subsidiaries of Fox West Coast and Fox West Coast Agency, a (1452)

service corporation providing various services incident to the supervision and management of operating theatres. The executive officers of United Artists Theatre Circuit, Inc., do not participate in the management of United West Coast Theatres Corporation.

"Q. Do you own stock in Skouras Theatres Corporation?

A. I do. My brother Charles, who is now president of Fox West Coast Theatres Corporation, and my brother George, who is president of Skouras Theatres Corporation, and I own 50 per cent of the stock of Skouras Theatres Corporation. My brother George and I are directors. I am not an officer.

"Q. Who owns the balance? A. Metropolitan Playhouses, Inc.

"Q. Is Skouras Theatres Corporation affiliated with Twentieth Century-Fox? A. No, sir. The only connection is that Skouras Theatres Corporation has been, since 1931, licensed under a franchise to exhibit Twentieth Century-Fox pictures in the various theatres it operates in metropolitan New York. At the time this franchise was granted to Skouras Theatres Corporation, I was not an officer or employee of Twentieth Century-Fox or of National Theatres Corporation or any of its subsidiaries. This franchise will expire in 1948.

"Q. Do you own any stock in Randforce Amusement Corporation? A. No; and I may say, neither do my brothers. (1453)

"Q. Who owns the stock of Randforce Amusement Corporation, if you know? A. I do know. One-half of the stock of Randforce Amusement Corporation is owned by Samuel Rinzler and his associates. The other half is owned by Metropolitan Playhouses, Inc.

Spyros P. Skouras

"Q. What interest does Twentieth Century-Fox have in Randforce Amusement Corporation? A. None—except, again, that Randforce has a similar franchise requiring it to play Twentieth Century-Fox pictures. In this connection it should be observed that many of the theatres operated by Skouras Theatres and Randforce were operated by Fox Theatres Corporation, and, in 1931, when the franchises were made, these theatres were the first neighborhood customers of Fox Film in metropolitan New York."

Mr. Caskey: And then, if your Honors please, there follows several questions paralleling those which were put to Mr. Zukor, denying explicitly the charges of the complaint, and with your leave I will simply have them copied into the stenographic record.

(The balance of the stipulated matter referred to is as follows:)

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to restrain competition in the production, distribution (1454)

and exhibition of motion pictures in the United States?
A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to aid and assist one another in the loaning and exchanging of production personnel and to deal with one another on uniform, non-competitive basis? A. No.

"Q. Has there been any agreement or understanding to your knowledge to withhold any of the production personnel and equipment from any producer of motion pictures?
A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any

Spyros P. Skouras

of them to exclude independent producers from access to production personnel and to withhold production equipment owned by the defendants or any of them on the same terms on which they are made available to the defendants in this case? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to fix the terms upon which motion pictures would be licensed for exhibition to any exhibitor in the United States? A. No.

"Q. Has there been or is there to your knowledge any agreement among the defendants or any of them to license (1455) any pictures for exhibition in any theatre before the pictures have been produced and before any exhibitor has had a fair opportunity to estimate the value and character of the films licensed and before such films have been completed or trade shown? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to condition the licensing of one or more films or group of films upon licensing of another film or group of films? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to condition the licensing of film in one theatre or group of theatres upon the licensing of film in another theatre or group of theatres? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to enter into long term franchises with circuits of theatres or to suppress competition offered by competing theatres during the terms of such long term franchises or to preclude independent distributors from licensing their pictures to those circuit theatres? A. No.

Spyros P. Skouras

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of (1458)

them to discriminate with respect to the license terms granted to circuit theatres because such theatres are part of the circuit? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them in licensing their pictures to favor the theatres in which the defendants or any of them had an interest against the theatres of exhibitors not affiliated with any producer-exhibitor with respect to run, clearance, license fees or any other terms of licensing? A. No, sir.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any two or more of them to license pictures for exhibition in the theatres in which one of the defendants had an interest, on condition or in consideration of another licensing its pictures with respect to the pictures disturbed by the other? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude independently produced motion pictures from theatres in which the defendants or any of them had an interest? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude unaffiliated exhibitors from the operation (1457)

of competing first-run theatres in cities and towns where theatres affiliated with defendants or any of them are located? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to exclude unaffiliated exhibitors from operating competing theatres on the same run as the subsequent-run

Spyros P. Skouras

affiliated theatres in the cities and towns where affiliated theatres are located? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to use the first and early run affiliated theatres to control the film supply, run, clearance and admission price of operators of competing unaffiliated theatres in the cities and towns where affiliated theatres are located, or elsewhere? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them as to the terms upon which each or any of them would license their film to unaffiliated exhibitors? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to deprive any theatre operator of the supply of film or to withhold film from any unaffiliated exhibitor or to limit (1458)

the terms and conditions on which licenses would be made to any unaffiliated exhibitor? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to divide the available films among the affiliated theatres owned or controlled by two or more producer-exhibitor defendants located in the same competitive area without competitive negotiations? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them not to compete with one another in the licensing of motion pictures to be exhibited in cities or towns where two or more of them had interests in theatres? A. No.

"Q. Has there been or is there to your knowledge any agreement or understanding among the defendants or any of them to enter into joint agreements with respect to a theatre whereby the film buying control or proceeds from the opera-